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this_____day of August, 1929.

_____

Attorney for Petitioner.

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 269

ROBERT G. MEADOWS, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 29, 1929

CERTIORARI GRANTED JANUARY 6, 1930

(34,400)

(34,400)

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

8156

ROBERT G. MEADOWS, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, Defendant

PETITION—Filed Jun. 18, 1926.

Comes now the above entitled Plaintiff, by his Attorney, S. R. Owens, and for a cause of action against the defendant, petitions and alleges:

1

That he is a citizen of the United States and of the State of Colorado, and resides at Fitzsimons, Colorado.

2

That the Plaintiff enlisted in the United States Army and served therein in the war against Germany, known as the World War. That the Plaintiff's services in said Army consists of the following enlistments, to-wit: enlisted March 31, 1914, and was given honorable discharge April 2, 1919; reinlisted April 3, 1919, and was given an honorable dis- [fol. 2] charge April 2, 1922; reenlisted in said army April 3, 1922 and was given a surgeon's Certificate of Disability from said army under date of August 2, 1923, on account of pulmonary tuberculosis.

3

That during the time of said enlistment and pursuant to the terms of the Act of Congress of October 6, 1917, relating to War Risk Insurance, the Plaintiff applied for insurance against death, and permanent and total disability and was issued a policy in the amount of $10,000.

4

That on or about February 1, 1920, the Plaintiff converted $3,000 of the $10,000 policy to a twenty-payment life policy, and allowed the remaining $7,000 of said Insurance to lapse.

5

That on or about the 5th day of March, 1923, the Plaintiff made application to the Defendant for the re-instatement and conversion of the remaining $7,000 of Insurance of the policy mentioned aforesaid and tendered the necessary premiums, and interest therefor, to-wit, $191.13, in accordance with the terms of War Risk Insurance Act and any amendments thereto, particularly Proviso 4 of Section 408 of the War Risk Insurance Act. That at the time said application was made, the Plaintiff was suffering from a disability, to-wit: tuberculosis (pulmonary) of a degree less than permanent and total disability.

6

That said application for the re-instatement and conversion of said $7,000 of insurance on said policy was rejected by the U. S. Veteran's Bureau, by letter from said Bureau, which is in words and figures as follows:

United States Veterans Bureau, Washington, August 6, 1925

(Emblem)

In Reply Refer to FABA

C—636 684

Mr. Robert G. Meadows, Fitzsimons General Hospital, Fitzsimons, Colorado.

Dear Sir: Receipt is acknowledged of your letter of July 31, 1925, regarding the insurance status of your case.

[fol. 3] In reply thereto please be advised that at the time the application for reinstatement and conversion of the $7,000 insurance was submitted, the evidence was sufficient,

in the opinion of the Officials of the Bureau, to show that you were permanently and totally disabled. Accordingly, your application for reinstatement and conversion was rejected.

A subsequent decision of the Board of Appeals holds that at that time the disability was not in fact shown to be permanent and total. However, since rejection was made you have been declared permanently and totally disabled, and reinstatement cannot be effected under existing legislation at this time.

All future communications relative to this case should bear the number C-636 684.

For the director,

Charles E. Mulhearn, Assistant Director.

7

That the Defendant erroneously and contrary to the terms of War Risk Insurance Act, and amendments thereto, rejected and refused the Plaintiff's application aforesaid. That in accordance with the terms of said Act, Plaintiff was, and is entitled to the reinstatement and conversion of the remaining $7,000 of the said Insurance Policy, effective March 5, 1923, and he again offers and stands willing, ready and able to pay the necessary premiums as provided by law for the reinstatement and conversion of said policy aforesaid. That the Plaintiff has been permanently and totally disabled since August 3, 1923, and not at any date prior to that time, and is entitled to receive benefits on said $7,000 insurance, in the sum of $40.25 per month since August 3, 1923.

Wherefore Plaintiff prays judgment against the Defendant directing it to reinstate and convert the remaining $7,000 of his Insurance Policy that he allowed to lapse on or about October 1, 1920, upon (his) tendering the necessary premiums therefor, and for the monthly benefits on said policy in the sum of $40.25 per month for each and every month since August 3, 1923, which totals $1384.00, and such other and further relief that the Court may deem proper in the premises.

S. *D.* Owens, Atty. for Plaintiff.

[fol. 4] *Duly sworn to by Robert G. Meadows. Jurat omitted in printing.*

IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED PETITION—Filed Aug. 21, 1926

Comes now the above entitled plaintiff by his attorney, and by leave of court first had and obtained files this, his amended petition, and alleges:

1

That he is a citizen of the United States and of the State of Colorado, and resides at Fitzsimons, Colorado.

2

That the plaintiff enlisted in the United States Army and served therein in the war against Germany, known as the World War. That the plaintiff's service in said Army consists of the following enlistments, to-wit: enlisted March 31, 1914, and was given honorable discharge April 2, 1919; re-enlisted April 3, 1919, and was given an honorable discharge April 2, 1922; re-enlisted in said Army April 3, 1922 and was given a surgeon's certificate of disability from said army under date of August 2, 1923, on account of pul- [fol. 5] monary tuberculosis, and is receiving compensation from the U. S. Veterans' Bureau therefor.

3

That during the time of his said enlistment and pursuant to the terms of the Act of Congress of October 6, 1917, relating to War Risk Insurance, the plaintiff applied for insurance against death, and permanent and total disability, and was issued a policy in the amount of $10,000.

4

That on or about February 1, 1920, the plaintiff converted $3.000 of the $10,000 policy to a twenty-payment life policy and allowed the remaining $7,000 of said insurance to lapse.

5

Feb. 21st,

That on or about the 5th day of March, 1923, the plaintiff made a written application to the defendant for the re-

instatement and conversion of the remaining $7,000 of insurance of the policy mentioned aforesaid, and tendered the necessary premiums and interest therefor, to-wit: $191.13. That in making the application aforesaid, he complied with any and all the terms of the War Risk Insurance Act and the amendments thereto, and any and all U. S. Veterans' Bureau rules and regulations pertaining to such application. That at the time said application was made, the plaintiff was suffering from a disability, to-wit, tuberculosis (pulmonary) of a degree less than permanent and total disability.

6

That said application for the re-instatement and conversion of said $7,000 of insurance on said policy was rejected by the Directors of the said U. S. Veterans' Bureau, and the U. S. Veterans' Bureau and the Director thereof refused and still refuses to allow same.

7

That the defendant erroneously and contrary to the terms of the War Risk Insurance Act, and amendments thereto, rejected and refused the plaintiff's application aforesaid. That in accordance with the terms of said Act, plaintiff was and is entitled to the reinstatement and conversion of the remaining $7,000 of the said insurance policy effective March 5, 1923, and he again offers and stands willing, ready and able to pay the necessary premiums as provided by law for the reintatement and conversion of said policy [fol. 6] aforesaid. That the plaintiff has been permanently and totally disabled since August 3, 1923, and not at any date prior to that time, and is entitled to receive benefits on said $7,000 insurance, in the sum of $40.25 per month since August 3, 1923.

Wherefore, plaintiff prays judgment against the defendant directing it to re-instate and convert the remaining $7,000 of his insurance policy that he allowed to lapse on or about October 1, 1920, upon (his) tendering the necessary premiums therefore, and for the monthly benefits, on said policy in the sum of $40.25 per month for each and every month since August 3, 1923, which totals $1,384.00, and such

other and further relief that the Court may deem proper in the premises.

S. R. Owens.

Duly sworn to by Robert G. Meadows. Jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

ANSWER TO AMENDED PETITION—Filed Jan. 4, 1927

Comes now the above defendant, the United States of America, by George Stephan, United States Attorney for the District of Colorado, and R. H. Blackman, Assistant United States Attorney for the District of Colorado, and in answer to plaintiff's amended petition filed herein, alleges:

I

That defendant neither admits nor denies that plaintiff is a citizen of the United States, and of the State of Colorado, but demands strict proof of said allegation.

II

[fol. 7] That defendant admits the allegations contained in paragraphs 2, 3, and 4, of said amended petition.

III

Answering paragraph 5, of said amended petition, defendant admits that on or about the 5th day of March, 1923, (the correct date being February 21, A. D. 1923) plaintiff made application to the defendant for reinstatement of the remaining $7,000 of his War Risk Term Insurance, and that he tendered this with a sum of money, in payment of the premiums in arrears, and interest thereon, in accordance with the terms of the War Risk Insurance Act, and amendments thereto, particularly the provisions of Section 408 of the War Risk Insurance Act. Defendant denies that in making such application, the plaintiff complied with "any and all U. S. Veterans' Bureau rules and regulations pertaining to such application." Defendant denies that "at the time said application was made, the plaintiff was

suffering from a disability, to-wit, tuberculosis (pulmonary), of a degree less than permanent and total disability." Defendant alleges that at the time the said application for reinstatement was submitted, and for a considerable period of time prior thereto, to-wit, from November 28, A. D. 1922, the plaintiff was permanently and totally disabled.

IV

Answering paragraph 6, of said amended petition, defendant admits that the application for reinstatement of the $7,000 War Risk Term Insurance was rejected by the United States Veterans' Bureau, and that the United States Veterans' Bureau refused, and still refuses to allow same.

V

Answering paragraph 7 of said amended petition, defendant denies each and every allegation thereof.

Wherefore, defendant prays that said amended petition be dismissed, and that defendant go hence with its costs in this behalf expended.

George Stephan, United States Attorney for the District of Colorado. R. H. Blackman, Assistant United States Attorney for the District of Colorado.

[fol. 8] *Duly sworn to by R. H. Blackman. Jurat omitted in printing.*

In United States District Court

Stipulation Waiving Jury—Filed July 28, 1927

Trial by jury in the above-entitled matter is hereby waived by both parties hereto, and it is hereby stipulated and agreed that the issues may be tried and determined by the Court.

S. R. Owens, Attorney for Plaintiff. R. H. Blackman, Attorney for Defendant.

IN UNITED STATES DISTRICT COURT

[Title omitted]

MINUTE ENTRY—July 28, 1927

At this day comes the plaintiff by S. R. Owens, Esquire, his attorney and the defendant by F. C. Northcutt, Esquire, [fol. 9] its attorney also comes; and this case comes on now to be tried to the court without a jury pursuant to a written stipulation thereto herein filed. And thereupon, comes the evidence; and the court having heard the evidence produced herein and the arguments of counsel, doth take the matter under advisement.

IN UNITED STATES DISTRICT COURT

MOTION FOR NEW TRIAL—Filed September 21, 1927

Comes now the defendant, The United States of America, by George Stephan, United States Attorney for the District of Colorado, and respectfully moves the Court for an order granting and directing that a new trial be had herein, for the reasons following:

I

The Court erred in finding that the plaintiff herein complied with the requirements for reinstatement prescribed by the rules and regulations promulgated by the United States Veterans Bureau, and prescribed by the War Risk Insurance Act.

II

That the Court erred in finding that the plaintiff herein, was not totally and permanently disabled at the time plaintiff applied for reinstatement of his insurance.

III

That the Court erred in finding that the plaintiff herein, during his lifetime, submitted proof satisfactory to the Director of the United States Veterans Bureau showing the service origin of the disability or aggravation thereof, and

that the applicant plaintiff herein was not totally and permanently disabled.

IV

That the Court erred in finding that the finding of the Director of the United States Veterans Bureau as to the plaintiff's condition of health was not conclusive, and was subject to review.

V

That the finding of the Court that the plaintiff herein was not totally and permanently disabled at the time of his application for reinstatement of his insurance is contrary to the law.

VI

[fol. 10] That the finding of the Court that the plaintiff herein was not totally and permanently disabled at the time of his application for reinstatement of his insurance is contrary to the weight of the evidence.

V

That this Court is without jurisdiction to determine the condition of the health of the plaintiff at the time application for reinstatement of War Risk Insurance was made.

VI

That this Court is without jurisdiction to enter any order herein requiring the Director of the United States Veterans Bureau, or any other office of the Government, to take affirmative action, or to pay an amount of money to the plaintiff herein.

Wherefore, defendant prays that the findings of court herein be set aside, and that a new trial be granted herein.

George Stephan, United States Attorney for the District of Colorado. R. H. Blackman, Assistant United States Attorney for the District of Colorado. Richard A. Toomey, Regional Attorney, Colorado Regional Office, U. S. V. B. L. A. Lawlor, Trial Attorney, U. S. Veterans Bureau. Forrest C. Northcutt, Assistant United States Attorney for the District of Colorado.

N/h

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OVERRULING MOTION FOR NEW TRIAL—September 27, 1927

[fol. 11] At this day, it appearing to the court that the record of the court on to wit, the twenty-first day of September, A. D. 1927, is erroneous,

It is ordered by the court that the following stand and be taken to be of the same force and effect as though entered herein on to wit: the twenty-first day of September, A. D. 1927.

At this day comes the defendant by Roy H. Blackman, Esquire, assistant district attorney; and the motion for a new trial of the issues herein joined coming on now to be heard is submitted to the court. And the court having considered the same and being now fully advised in the premises:

It is ordered by the court for good and sufficient reasons to the court appearing that the said motion be, and the same is hereby denied.

IN UNITED STATES DISTRICT COURT

No. 8156

ROBERT G. MEADOWS

vs.

THE UNITED STATES OF AMERICA

Money Demand War Risk Insurance Act

JUDGMENT—Sept. 27, 1927

This cause came on regularly for trial on the 28 day of July, A. D. 1927, S. R. Owens, appearing as counsel for the Plaintiff, and the United States District Attorney by R. H. Blackman, Richard A. Toomey, L. A. Lawlor, and Forrest C. Northcutt, for the Defendant. A trial by jury having been expressly waived by the counsel for the respective

parties, the cause was tried before the court sitting without a jury; whereupon witnesses on the part of the Plaintiff were sworn and examined, the Defendant not presenting any evidence; and the evidence being closed, the cause was submitted to the court for consideration and decision, and, after due deliberation thereon, the court finds specifically that the Plaintiff was not permanently and totally disabled on February 21, A. D. 1923; that he is entitled to have the Seven Thousand Dollars ($7,000.00) remaining of his war risk insurance reinstated; that he was permanently and totally disabled on and after August 3, A. D. 1923; that the [fol. 12] court finds generally for the Plaintiff; that he is entitled to judgment and other and further relief as prayed in the amended complaint.

It is therefore ordered and adjudged that the Plaintiff's remaining Seven Thousand Dollars ($7,000.00) of war risk insurance be, and it is hereby reinstated as of February 21, A. D. 1923, upon his tendering the necessary premiums therefore.

That plaintiff, Robert G. Meadows have and recover of and from the defendant, the United States of America, judgment in the sum of One Thousand Nine Hundred Seventy-two and 25/100 Dollars ($1,972.25), being an amount equal to Forty and 25/100 Dollars ($40.25), for each and every month beginning the 3rd day of August A. D. 1923, and ending with the 3rd day of September, A. D. 1927.

That S. R. Owens, Attorney for the plaintiff in the above and foregoing action is hereby awarded the sum of One Hundred Ninety-seven and 22/100 Dollars ($197.22),as Attorney, for services rendered plaintiff in the above-entitled action, said amount being ten per cent of the judgment aforesaid, together with ten per cent on each and every monthly installment hereafter received by plaintiff from the defendant on account of payments to be made plaintiff by defendant under the policy aforesaid.

IN UNITED STATES DISTRICT COURT

PETITION FOR WRIT OF ERROR—Filed Dec. 21, 1927

Comes now the United States of America, defendant herein, by George Stephan, United States Attorney for the

District of Colorado, and R. H. Blackman, Assistant United States Attorney for the District of Colorado, and says that on the 27th day of September, A. D. 1927, the Court entered judgment herein in favor of the plaintiff and against the defendant, in which judgment and the rendition thereof and in the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the Assignment of Errors, which is filed with this petition.

Wherefore, this defendant prays for the allowance in this cause of a writ of error to the United States Circuit Court of Appeals for the Eighth Circuit, for the correction of the errors so complained of, and that a transcript of the record of proceedings and papers in this cause duly authenticated [fol. 13] may be sent to the said United States Circuit Court of Appeals for the Eighth Circuit.

Dated at Denver, Colorado, this 21st day of December, A. D. 1927.

George Stephan, United States Attorney for the District of Colorado. R. H. Blackman, Assistant United States Attorney for the District of Colorado.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed Dec. 21, 1927

The defendant in the above-entitled action, in connection with its petition for a writ of error, makes the following assignment of errors which it avers occurred upon the trial of this cause, to wit:

I

The Court erred in finding that the plaintiff herein complied with the requirements for re-instatement of his War Risk Term Insurance Policy, as prescribed by the rules and regulations promulgated by the United States Veterans Bureau and prescribed by Section 408 of the War Risk Insurance Act, as amended (42 St. L. 1525).

II

The Court erred in finding that the plaintiff was not totally and permanently disabled at the time he applied for the re-instatement of his insurance.

III

The Court erred in finding that the plaintiff herein, during his lifetime, submitted proof satisfactory to the Director of the United States Veterans Bureau, showing the service origin of the disability or aggravation thereof, and that the applicant, the plaintiff herein, was not totally and permanently disabled.

IV

The Court erred in finding that the finding of the Director of the United States Veterans Bureau as to the plaintiff's condition of health at the time he made application for re- [fol. 14] instatement of his War Risk Term Insurance was not conclusive and was subject to revision.

V

That the finding of the Court that the plaintiff herein was not totally and permanently disabled at the time of his application for reinstatement of his insurance is contrary to law.

VI

That the finding of the Court that the plaintiff herein was not totally and permanently disabled at the time of his application for reinstatement of his insurance was contrary to the weight of the evidence.

VII

That this Court was without jurisdiction to determine the condition of health of the plaintiff at the time the application for reinstatement of his War Risk Term Insurance was made.

VIII

That this Court was without jurisdiction to enter any order herein requiring the Director of the United States Veterans Bureau or any other officer of the government to take affirmative action or pay any amount of money to plaintiff herein.

IX

That the judgment of the Court entered herein was contrary to the law.

X

That the judgment of the Court entered herein was contrary to the weight of the evidence.

XI

That the Court erred in entering judgment herein in favor of the plaintiff and against the defendant.

XII

That the Court erred in overruling defendant's motion to dismiss plaintiff's case at the conclusion of plaintiff's testimony.

XIII

That the Court erred in overruling defendant's Motion for New Trial.

[fol. 15] Wherefore, defendant prays that said judgment herein of the District Court of the United States for the District of Colorado be reversed and that this defendant may have such further relief as may be just and proper to the end that justice may be done in the premises.

Dated at Denver, Colorado, this 21st day of December, A. D. 1927.

George Stephan, United States Attorney for the District of Colorado. R. H. Blackman, Assistant United States Attorney for the District of Colorado.

B/b.

IN UNITED STATES DISTRICT COURT

Bill of Exceptions—Filed Dec. 21, 1927

CAPTION

Be It Remembered that on the 27th day of July, A. D. 1927, the same being one of the juridical days of the regular May, 1927, Term of the District Court of the United States within and for the District of Colorado, sitting at Denver, the above-entitled cause came on for hearing before the Honorable J. Foster Symes, Judge of said Court, the plain-

tiff appearing by Sam R. Owens, Esquire, and A. Sheridan Abel, Esquire, his attorneys, and the defendant appearing by Roy H. Blackman, Esquire, Assistant U. S. Attorney, Lawrence A. Lawler, Esquire, Trial attorney U. S. Veterans Bureau, and Richard A. Toomey, Esquire, Regional Attorney U. S. Veteran's Bureau, its attorneys.

Thereupon the following proceedings were had:

The Plaintiff, To Maintain the Issues herein in his behalf offered and Gave in Evidence as Follows:

ROBERT G. MEADOWS, plaintiff, being first duly sworn, testified in his own behalf as follows:

Direct examination.

By Mr. Owens:

Q. State your name, please.

A. Robert G. Meadows.

Q. You are the plaintiff in the case of Robert G. Meadows against the United States of America?

A. Yes.

[fol. 16] Q. Are you a citizen of the United States and resident of the State of Colorado?

A. Yes.

Q. Were you in the army from April 3, 1919, to April 2, 1922?

A. Yes.

Q. Did you reinlist after that?

A. Yes.

Q. State when you re-enlisted.

A. Reenlisted April 3, 1922, discharged disabled August 2, 1923.

Q. How long did you serve in the army in all?

A. From February 20, 1911, to August 2, 1923.

Q. Did you take out an insurance policy while in the army?

A. Yes.

Q. How much?

A. Ten Thousand Dollars.

Q. Did you permit any of that to lapse?

A. Permitted $7,000 to lapse.

Q. When did it lapse?

A. February, 1920.
Q. Did you ever apply to reinstate the remaining $7,000?
A. Yes.
Q. When?
A. About March 2, 1923.
Q. Did you submit yourself to examination at that time?
A. I was placed in the hospital at the time.
Q. And had the examination taken at the hospital?
A. Yes.
Q. Was that submitted to the Veterans Bureau along with your application for reinstatement?
A. Yes.
Q. Did you tender any premiums along with the application?
A. Back premiums of $199.13.
Q. Back premiums from the date of the lapse of the policy?
A. Yes.

The Court: That is all admitted in the pleadings, isn't it?
Mr. Owens: Yes, it is, Your Honor.

Q. In what organization did you re-enlist?
A. Company I, 12th Infantry.
Q. What became of this application for re-instatement?
A. I was informed by the Veterans Bureau that my application was rejected.
Q. When were you so informed?
A. July, 1923.
Q. State for what reason your application was rejected.
A. Totally and permanently disabled.
Q. From what date?
A. From February 21, 1923.

(Thereupon a paper was marked for identification plaintiff's Exhibit A.)

[fol. 17] Q. I hand you plaintiff's Exhibit A, and ask you to state what that is.
A. Letter received by me from the Veterans Bureau on July 6, 1925.
Q. Concerning what?
A. Concerning my request for reinstatement of insurance.

Mr. Owens: We offer plaintiff's Exhibit A in evidence.

Mr. Lawler: We object; not the best evidence of rejection. The rejection of his application is already admitted in the pleadings.

Mr. Owens: That goes to the date as to when he was permanently and totally disabled.

The Court: That is not the best evidence.

Mr. Owens: It is a letter from the Government in the due course of business concerning the matter at issue.

The Court: How do we know it is from the Government? No one says it is.

Mr. Owens: Plaintiff testified he got it.

The Court: You got that letter, but that doesn't prove it.

Mr. Owens: We withdraw the offer at this time.

(Thereupon papers were marked for identification plaintiff's Exhibits B, C, D, E, F, G, H, I and J, respectively.)

Mr. Abel: I would like to ask the court to carefully consider its ruling on whether these letters are admissible.

The Court: As I understand it, the letter has been withdrawn.

Mr. Abel: We would like to offer them again. These were written by the defendant.

The Court: The question is, whether it is admissible or not. On the evidence now before the court it is not admissible, not properly proven.

Mr. Abel: The plaintiff testified they were received by him.

The Court: I understand that.

[fol. 18] Mr. Abel: If the Government disputes the fact of the matter, that these letters were written by the Veterans Bureau, they ought to prove that.

The Court: We are not concerned with that. The question is, whether, it has been proven properly.

Mr. Owens: We withdraw it for the present, Your Honor. I think that is all at this time.

Mr. Lawler: Do you want to offer his application for reinstatement?

(Thereupon a paper was marked for identification plaintiff's Exhibit K.)

Q. I hand you plaintiff's Exhibit K and ask you to state what that is?

A. Application for reinstatement.

Mr. Owens: We offer this in evidence. Counsel has agreed to the offer of this.

The Court: Very well.

Mr. Owens: That is all.

Mr. Lawler: No cross-examination.

Richard A. Toomey, called and sworn as a witness on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Owens:

Q. State your name, please.

A. Richard A. Toomey.

Q. Where are you employed?

A. United States Veterans Bureau, Denver, Colorado.

Q. How long have you been so employed?

A. Approximately four years.

Q. You are familiar with Government records, that is, of the Veterans Bureau?

A. Some of the records pertaining to the United States Veterans Bureau.

Q. Can you identify the Assistant Director's signature, Charles E. Mulhearn?

A. I cannot.

Q. Have you ever seen it?

A. I have seen the signature many times, but I cannot say if it is the original.

Q. I hand you plaintiff's Exhibit A and ask you to state whether or not you know what that is.

A. This pretends to be——

[fol. 19] Q. State what it is, if you know. Is that a letter from the United States Veterans Bureau at Washington?

A. That is what it pretends to be.

Q. Who is it signed by?

A. It purports to be the signature of Charles E. Mulhearn, Assistant Director.

Q. Have you ever seen that signature before in Government business?

A. I have seen the name of Charles E. Mulhearn written.

Q. Have you ever seen a signature like that on any letters?

A. I don't believe I am competent to testify to that.

Q. You receive letters from the central office, signed by Mulhearn quite often, don't you, in the course of business in the Veterans Bureau?

A. I did before his death.

Mr. Owens: We offer plaintiff's Exhibit A in evidence.

Mr. Lawler: We object; not properly identified. It is incompetent, irrelevant and immaterial; not the best evidence.

The Court: Why don't you admit this?

Mr. Lawler; I don't know for what purpose he wants it admitted.

The Court: Why don't you admit it to save time. I don't know if it has any probative value.

Mr. Owens: The central office states that the man was not permanently and totally disabled on February 5, 1923.

Mr. Lawler: Then I object because it is not competent evidence, nor relevant to any of the issues in this case. We have admitted that the Bureau denied reinstatement, and allege that he was permanently and totally disabled at that time, and that was the reason for the rejectment of his application.

Mr. Owens: This letter goes to show he was not permanently totally disabled on that day. The Board of Appeals so states in this letter. The Government is bound by all the rules of evidence of a private insurance company. It does not prove it, but it has some bearing.

Mr. Lawler: This does not make any statement with reference to any date of permanent total disability, in any event. It merely states that "the evidence in file is insufficient to show that your disability is ratable as permanent and total prior to August 2, 1923."

[fol. 20] The Court: Objection sustained. That is not proof of any action by the board.

Mr. Owens: Exception.

Q. I hand you plaintiff's Exhibit B and ask you to state what that is, if you know.

A. This purports to be a letter addressed to Robert G. Meadows, Fitzsimons General Hospital, Fitzsimons, Colorado, dated August 6, 1925, over the signature of, or over what purports to be the signature of Charles E. Mulhearn, Assistant Director.

Q. Do you know whether that is Mulhearn's signature or not?

A. I do not.

Mr. Owens: If the court please, we would like to call another witness and excuse Mr. Toomey.

The Court: Very well.

Mr. Lawler: We will admit that these came from the central office, signed by Charles E. Mulhearn or some one authorized to sign his name, to save time.

Mr. Owens: Very well, then. We offer plaintiff's Exhibits A to K, inclusive, which came from the central office, concerning plaintiff's disability.

Mr. Lawler: We object on the ground that they are incompetent, irrelevant and immaterial; not the best evidence; have no bearing on the issues of the case, except for the purpose of showing, possibly, rejection of his application for reinstatement and that is admitted.

Mr. Owens: They all go to show the Veterans Bureau decision as to disability, Your Honor; what they found.

The Court: Suppose they do? It isn't evidence of that.

Mr. Owens: It is an admission on the part of the defendant.

The Court: Do you think that is competent evidence to prove his disability, having someone come in here to testify to what somebody else said? I think that is hearsay evidence.

Mr. Owens: These letters were written in due course of business by the Government.

The Court: Here is one that says he was permanently and totally disabled. You don't want that in, do you?

[fol. 21] Mr. Owens: That is a mistake. Permanent total up to a certain date.

The Court: As I understand, you want to prove he was permanently and totally disabled in April, 1923?

Mr. Owens: We say he was not permanently and totally disabled on March 5, 1923, when he applied to reinstate his

insurance, but that he was permanently and totally disabled on August 3, 1923.

The Court: The objection is sustained as not the best evidence. It is hearsay, what someone's opinion is.

Mr. Owens: We save an exception as to each exhibit.

E. B. MAYNARD, a witness called and sworn on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Owens:

Q. State your name, please.
A. Edwin Brooks Maynard.
Q. What is your official capacity in the army?
A. Major Medical Corps.
Q. Where are you stationed?
A. Fitzsimons General Hospital.
Q. Do you have charge of the records at Fitzsimons, the medical records, clinical records of the patients, and so forth?
A. I do.
Q. How long have you so had charge of those records?
A. Since December 6, 1924.
Q. Do you know the plaintiff in this case, Robert G. Meadows?
A. I do.
Q. Does he have any clinical records at Fitzsimons Hospital, reports of physical examinations, and so forth?
A. Not now. That is, they are not at Fitzsimons at this time.
Q. He had some records there?
A. Yes, he had some records there.
Q. Where are those records now?
A. They were turned over by me to Mr. Lawler.

(Thereupon a paper was marked for identification plaintiff's Exhibit L.)

Q. I hand you plaintiff's Exhibit L and ask you to state what it is.

[fol. 22] A. This is 55-A admission slip and clinical record of Robert G. Meadows, First Sergeant Company I, 12th Infantry.

Q. The plaintiff, sitting over here (indicating)?

A. Yes.

Q. They are permanent records of Fitzsimons, are they Major?

A. They are.

Q. Of this plaintiff?

A. Yes.

Q. What does that exhibit purport to show?

Mr. Lawler: We object, it is hearsay, incompetent, irrelevant and immaterial. They are not facts within the witness' knowledge.

The Court: He is not qualified yet. You are calling for conclusion of law, and not bringing out facts so the court can determine.

Q. What is that exhibit, Major, if you know?

A. I stated it was 55-A, admission slip and clinical record of Robert G. Meadows, First Sergeant Company I, 12th Infantry.

Q. Show anything else?

A. Shows he was admitted to the hospital November 28, 1922.

Mr. Lawler: We object to reading the records.

The Court: Can't read the record until it is in evidence.

Mr. Owens: He has identified the record.

The Court: You have not qualified him yet.

Q. You had charge of these records, did you, Major?

A. I did.

Q. Do you personally see that these records are made?

A. I did not personally see this, because it was before my time of arrival at the hospital. This record was concluded in 1923 and I arrived in 1924.

Q. Do you know of your own knowledge whether or not this exhibit is a correct record of the physical examination of Meadows on the dates that are on there?

A. I know it purports to be. I did not personally examine Meadows and check the records with the examination.

Q. It is an army record, isn't it?
A. It is an army record.
Q. Permanent army record?
A. Permanent army record.

Mr. Owens: We offer plaintiff's Exhibit L, in evidence.
[fol. 23] Mr. Lawler: We object; incompetent, irrelevant and immaterial; hearsay; not the best evidence.
The Court: I think the record would be admissible if he proved it as such, but it has not been proven as such yet.
Mr. Owens: He has testified to these records.
The Court: You are just asking him for a lot of conclusions, and what he thinks about those records. Unless it is properly established we cannot admit it.
Mr. Owens: He has testified he had charge of these records.
The Court: I heard all of his testimony.
Mr. Owens: We withdraw the offer at this time.

(Thereupon a paper was marked for identification plaintiff's Exhibit M.)

Q. I show you plaintiff's Exhibit M and ask you to state, if you know, what that is.
A. Yes. Current clinical records of Robert G. Meadows.
Q. Do you know of your own knowledge that that is the clinical record of the plaintiff?
A. I do.
Q. How do you happen to know that?
A. Well, I know it because it bears my signature in two places that the record has been turned in and diagnosis checked by myself. Turned in as his record.
Q. Was it turned in in due course of business of the Government?
A. On the occasion when that was signed it was.
Q. Anything else in that exhibit?
A. Series of sick and wounded cards, report made to the Surgeon General relative to diagnosis and change of diagnosis of the patient.
Q. Do you know of your personal knowledge that is the report made to the Surgeon General concerning his disability?
A. I know they were taken from the files in my office.
Q. What date was that made?

Mr. Lawler: We object, Your Honor. These records are not in evidence.

The Court: Sustained.

Mr. Owens: Exceptions.

Q. They are part of the clinical records in Fitzsimons General Hospital which are in your custody, are they?

[fol. 24] A. They are.

Q. And of this plaintiff, Robert G. Meadows?

A. They are.

Mr. Owens: We offer in evidence plaintiff's Exhibit M.

Mr. Lawler: We object, on the ground not properly identified or authenticated; on the further ground that they are incompetent, irrelevant and immaterial, mere hearsay and not the best evidence.

Mr. Owens: They are part of the permanent records, and he has testified that they are such of his own personal knowledge.

The Court: With due respect to the witness, we cannot say. We have got rules of evidence. Can't admit it on the present status of the case.

Mr. Owens: We had an understanding with the district attorney's office that they might be admitted.

The Court: Can't help that. I am not bound by your understanding with the district attorney's office.

Mr. Owens: We withdraw the offer. That is all.

Mr. Lawler: No cross-examination.

William F. Rice, a witness called and sworn on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Owens:

Q. State your name, please.

A. William Frederick Rice.

Q. You are in the army?

A. Yes.

Q. What capacity?

A. Major Medical Corps.

The Court: What army, French Army, or English Army? Can't expect the court to guess at it.

Q. Are you in the United States Army?
A. Yes.
Q. In what capacity?
A. Major Medical Corps.
Q. Where are you stationed?
A. Fitzsimons General Hospital, Denver, Colorado.
Q. Are you acquainted with the plaintiff in this case, Mr. Robert G. Meadows?
A. Not personally acquainted, no.
Q. Can you identify him? Is he sitting in the court room?
A. I can, yes.
[fol. 25] Q. Have you ever made an examination of him, a physical examination?
A. I have.
Q. Will you kindly state on what date?
A. It will be necessary for me to have the clinical records before I can determine absolutely. (Records handed to witness). These records show I examined Robert G. Meadows on December 3, 1922.
Q. What was the result of that examination, or, in other words, what did you find concerning his physical condition at that time?

The Court: Tell us, doctor, the extent of your examination, so we can tell whether it was a full, complete, detailed one, and then tell us after that what you found.

A. At that time I wrote a somewhat detailed history of the patient's statement concerning his [symptoms]. I examined his X-ray plates, observed his temperature charts, and his other clinical findings, and made a diagnosis of tuberculosis of both lobes of the left lung, active.

The Court: Made a pretty thorough examination?
The Witness: Yes.
The Court: You found what?
The Witness: Active tuberculosis both lobes left lung, with cavitation left upper lobe.
The Court: This condition was all confined to the left lung?
The Witness: Yes.

Q. What was your diagnosis? Was he or was he not permanently disabled on that date?

A. I don't believe I am capable of testifying to that.

Q. In your capacity in the army are you not called upon to determine whether a man is permanently disabled, from time to time?

A. We are not required to so state, from the standpoint of the Veterans Bureau.

Q. What was your diagnosis?

A. Tuberculosis, pulmonary, chronic, active upper left lobe and upper part of left lower lobe, with cavitation of the left upper lobe.

Q. Did you examine him subsequent to that date?

The Court: That was December 3, 1922?

The Witness: Yes.

[fol. 26] A. So far as this record shows, I did not.

Q. Do you know whether or not you examined him after that?

A. I do not.

Q. I hand you plaintiff's Exhibit M; see if that refreshes your recollection.

A. These records do not show that I examined him subsequently.

Mr. Owens: That is all.

Cross-examination.

By Mr. Lawler:

Q. Major, at the time of this examination which you made in December, 1922, was Mr. Meadows in Fitzsimons Hospital as a patient?

A. He was.

Q. Do you remember whether or not he was in bed at the time you examined him?

A. At the time of the actual examination?

Q. Yes?

A. He was not.

Q. Was he just prior to the examination?

A. I couldn't say.

Q. Do you know whether he was kept as a bed patient at that time?

A. I can say that all patients are kept for certain hours of the day as bed patients, and he was at that time for those hours.

Q. In your opinion, should a man in the condition of this plaintiff be in bed?

Mr. Owens: We object as immaterial.

Q. I mean the condition at the time of this examination?

The Court: There is an objection here.

Mr. Lawler: It is a proper question. This is the physician who examined him. He said it was active tuberculosis.

(Question read as follows: In your opinion, should a man in the condition of this plaintiff be in bed?)

The Court: What is the object of that?

Mr. Lawler: To show his general condition of health, I mean, should a person who has the physical symptoms which he found in the plaintiff be in bed?

The Court: It is immaterial. It is a question of what this man actually did. Objection sustained.

Q. What was the general condition of the plaintiff at the time of your examination?

[fol. 27] A. He appeared to have lost some weight, and his temperature chart showed a moderate degree of afternoon fever. May I ask if I shall give the physical findings?

Q. No; just the general physical findings.

A. He appeared to be under weight, and his temperature chart showed a slight afternoon fever.

Q. Do you remember what treatment you prescribed for him at that time?

A. I can't remember the treatment prescribed in this individual case, no.

Q. Do you have any set regular treatment to give to tubercular patients, who have active tuberculosis in both lobes of the left lung, with cavitation in the upper?

Mr. Owens: We object as immaterial; no bearing on the issues of the case; does not tend to prove or disprove the issues as to what treatment he gave him.

Mr. Lawler: The issue in this case is, whether or not this plaintiff was permanently and totally disabled at the time he made application for reinstatement of insurance on

February 21, 1923, and any evidence which tends to show whether he had the ability and capacity to follow a gainful occupation has direct bearing upon the issues of the case.

The Court: I think that is true; but you are asking what he prescribed.

Mr. Lawler: I asked him, first, if he remembered what treatment was prescribed in this particular case, and he said no. Now I want to show what his treatment was by the general course of treatment he would [—] prescribed in ordinary circumstances.

The Court: I think the objection is good. Anything this gentleman knows about his condition is all right, but what was prescribed does not throw any light upon it, unless he prescribed for this specific man.

Mr. Lawler: He says he has no personal knowledge.

The Court: Then the objection is sustained, if he has no personal knowledge.

Q. In your opinion, was Mr. Meadows, at the time of your examination, able to follow continuously a gainful occupation?

A. He was not.

Mr. Lawler: That is all.

[fol. 28] Redirect examination.

By Mr. Owens:

Q. On what do you base that statement, that he was not capable of following a gainful occupation?

A. I consider that any man with active tuberculosis of one entire lung is not capable of working.

Q. In fact, he was carrying on, was he not?

A. At the time I examined him he was not.

Q. Wasn't he in the army then?

A. He probably was, but wasn't working.

Q. He was receiving pay, was he not?

A. So far as I know he was.

The Court: Was he on active duty?

The Witness: He was admitted as a patient from active duty.

The Court: In other words, he was at the hospital all the time? He wasn't on duty and just coming over for treatment?

The Witness: No, sir.
The Court: He was doing no active duty in the army?
The Witness: No.
Mr. Owens: That is all.
Mr. Lawler: That is all.

LLOYD E. TEFFT, a witness called and sworn on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Owens:

Q. State your name, please.
A. Lloyd E. Tefft.
Q. Are you now in the United States Army?
A. I am.
Q. How long have you been in the United States Army?
A. Nearly thirteen years.
Q. What is your rank?
A. Major.
Q. In what corps?
A. Medical corps.
Q. Are you now stationed at Fitzsimons General Hospital, Colorado?
A. I am.
Q. Were you stationed at Fitzsimons General Hospital in 1923?
A. I was.
Q. All of the year 1923?
A. Yes sir.
[fol. 29] Q. Did you ever have occasion to give a physical examination to Robert G. Meadows?
A. I did.
Q. On what date? Would you like to refresh your memory from records?
A. Yes. (record handed to witness) The records show three examinations by me.

The Court: We are not concerned with what the records show; we want to know what you know.

A. I examined Sergeant Meadows some time during December, 1922.

Q. What kind of examination did you give him, Major, a physical examination?

A. Physical examination.

Q. Any particular kind of physical examination? Was it the lungs?

A. Complete physical examination, especially of his chest.

Q. State to the court just what you found and what your findings were?

A. Found activity in both lobes of the left lung with cavitation of left upper lobe.

Q. This cavitation of the left upper lobe, was it large or small?

A. As I remember it, it was rather small.

Q. Rather small?

A. Yes.

Q. Was that the extent of the involvement in the left lung, that small cavitation?

A. With probable activity in the upper part of the left lower lobe.

Q. Did you find any tuberculous complications, such as ulcerative laryngitis, or anything of that kind?

A. I did.

Q. When did you next examine him?

A. I can't say definitely.

Q. Refresh your memory from the records.

A. I examined him in March, 1923, and May.

Q. State your findings in March, 1923?

A. March, 1923, the patient had artificial pneumothorax and the left lung was collapsed.

The Court: Was that collapsed by you?

The Witness: Either myself or assistant.

The Court: It was a medical examination?

The Witness: Yes.

[fol. 30] Q. You found that on this examination?

A. Yes.

Q. Was the right lung collapsed?

A. Left lung.

Q. What was the condition of the right lung?

A. The right lung showed no signs of tuberculosis.

Q. The right lung was clear, was it?

A. Clear, yes.

Q. The cavitation, what had become of that, that you found in December?

A. That was collapsed along with the rest of the lung.

Q. What was his general physical condition at that time?

A. Good.

Q. That was March 5th?

A. March 3rd.

Q. Do you know what his weight was at that time?

A. I do not. The record, either prepared by myself or my assistant, would show it.

Q. Did he, at that time, show any indications of recovery? I don't mean complete, but sufficient to carry on some occupation?

A. Except the lung was collapsed he was in good condition.

Q. Could a man with one lung collapsed and the other in good condition, as you say this man was, carry on at any kind of light work?

A. Light work, yes.

Q. Can you state any particular work that he might be able to carry on under the physical conditions as you found them at that time?

A. As long as a lung is kept collapsed by repeated injection of air, with as favorable results as were in this case from the collapse, he could do such light work as clerical work.

Q. When did you next examine him?

A. In April, 1923.

Q. At Fitzsimons General Hospital?

A. At Fitzsimons General Hospital.

Q. What was his condition at that time?

A. Practically the same as the preceding month.

Q. Was he any worse?

A. Not worse; probably somewhat better.

Q. Probably somewhat better in April?

A. Yes.

Q. Are you a tuberculous specialist, Major; that is, have you specialized in that?

A. Only in the course of routine work for a year and a half in Fitzsimons.

[fol. 31] Q. In your opinion, going back to April, 1923, was Mr. Meadows permanently totally disabled from carrying on any gainful occupation?

Mr. Lawler: We object. Calls for the conclusion of the witness.

Mr. Owens: He is an expert witness. He has examined him three times and had the history of the case at Fitzsimons.

The Court: What do you mean by totally and permanently? We haven't had a definition yet.

Mr. Owens: He ought to be able to tell from a medical standpoint if he was able to carry on.

The Court: He said he was capable of carrying on light work.

Mr. Owens: Very well. I'll withdraw the question. That is all.

Cross-examination.

By Mr. Lawler:

Q. At the time of your first examination of Mr. Meadows in December, 1922, was he a patient at Fitzsimons Hospital?

A. He was.

Q. Was he on active service there, or *in* just a patient for treatment?

A. As a patient.

Q. For treatment?

A. Yes, for treatment.

Q. Do you know whether he was working at that time or not?

A. I do not.

Q. Was he working about that time, in December?

A. No; patient.

Q. Did you recommend that he work at that time?

A. I did not.

Q. Do you remember what treatment you prescribed at that time for him?

A. Collapse of the lung.

Q. That was the time of your first examination?

A. I believe so.

Q. What is a collapsed lung?

A. That is an expedient to clear up activity of one lung.

Q. First, my question was, what is it?

A. It is allowing air into the chest wall, between the lung and chest wall, allowing the lung to collapse.

Q. What is the effect of air going in, with reference to the lung?

A. It collapses the lung.

[fol. 32] Q. When the lung collapses, what happens to it? I mean, with reference to its use.

A. It is thrown out of use.

Q. Is there a complete loss of use of the lung that is collapsed?

A. Depending on the amount of collapse.

Q. By the way, were you stationed at Fitzsimons from December to March?

A. I was.

Q. Do you know whether Mr. Meadows continued to be a patient in the hospital during that period?

A. He did.

Q. He was still a patient in the hospital in March, 1923, at the time of your examination?

A. Yes.

Q. Was he working during that period or not, if you know?

A. No outside work. I don't recollect whether he was permitted graduated exercise at that time or not.

Q. At the time of your examination in March, 1923, did you recommend that the plaintiff work?

A. I did not.

Q. Did you recommend that he continue in the hospital for further treatment?

A. I don't think I made any recommendation one way or the other.

Q. Do you know whether he did remain in the hospital?

A. He remained through March.

Q. You testified at the time of your examination in March, 1923, his physical condition was good, his general physical condition?

A. Yes.

Q. What do you mean by that statement, as to his condition being good?

A. I don't recall, except probably based upon the fact of some gain in weight.

Q. Did he have active tuberculosis at that time?

A. Yes.

Q. He had collapse of the entire left lung?

A. Yes.

Q. And when you stated his condition was good, you meant his condition was good as an average individual, or for a patient who has active tuberculosis with a collapsed lung?

A. For a patient with tuberculosis.

Q. You testified that he could do light clerical work at that time. Did you recommend that he do light work at that time?

Mr. Owens: We object. He made no recommendation at all.

Mr. Lawler: He has not made any statement of this.

[fol. 33] The Court: Overruled.

A. I didn't make recommendation one way or the other, as I recall.

Q. He remained in the hospital after that examination for further treatment?

A. He did.

Q. Do you know how long he remained in the hospital after that?

A. I do not.

Q. Your next examination was in April?

A. April.

Q. You found him still suffering with active tuberculosis at that time?

A. I did.

Q. And his lung was still collapsed?

A. Still collapsed.

Q. And he was still in the hospital as a patient?

A. He was.

Q. Do you know whether you examined him after that time or not?

A. Examined him in May, 1923.

Q. What condition did you find then?

A. Practically the same condition as the preceding month, with the possibility of a small amount of fluid present in the lower part of the left chest.

Q. Of what significance is that?

A. Fluid usually occurs sooner or later in most all collapse cases.

Q. Is that of any particular significance with reference to the health of the patient, or probability of recovery?

A. None.

Q. You testified that you found a cavitation when you next examined him. Where was that cavity located?

A. Left upper lobe.

Q. You said it was a small one. Can you give us an idea of about how large it was?

A. I cannot, because there is no record of the examination made at that time.

Q. Can you recall whether that cavity increased?

A. I cannot.

Q. What is the significance of a cavity in the lungs?

A. It is a breaking down of the tissue in that particular area.

Q. Is that the result of tuberculosis disease?

A. It is.

Q. Is that a permanent injury to the lung?

A. Not necessarily. The cavity sometimes clears and heals up.

[fol. 34] Q. Is that the general rule, that they do as a rule clear up and heal?

A. I don't know.

Mr. Lawler: That is all.

Redirect examination.

By Mr. Owens:

Q. Did you find that cavity in the subsequent examinations? You stated you found it in the first examination.

A. It is impossible to find it in a collapsed lung.

By The Court:

Q. How long have you been in the army?

A. Nearly thirteen years.

Q. In the Medical Corps all that time?
A. Yes sir.
Q. How long have you handled these tubercular cases?
A. A year and a half at Fitzsimons.
Q. Any experience before that?
A. No sir.
Q. What is your medical education?
A. Graduate of the University of Michigan.
Q. When did you graduate?
A. 1911.
Q. And been active in the practice of your profession since?
A. Yes.
Q. When you first examined this young man, you found both lobes of the left lung involved?
A. As I recall it, on my first examination in December I found activity in the left upper lobe, and probably activity in the upper part of the left lower lobe.
Q. At that time the whole lung was not involved?
A. No sir.
Q. On the next examination you collapsed it, or had it collapsed, was the whole lung involved at that time?
A. I couldn't tell, sir.
Q. You can't tell the condition of the lung after you collapse it?
A. No sir.
Q. At the time of the collapse, or just previous thereto, was the whole lung involved?
A. No sir.
Q. In other words, he had no use of that left lung?
A. Yes.
Q. At no time was his right lung involved?
A. No sir.
Q. You examined him first in December, 1922, and last in May, and two examinations in between that time; can you give us a comparison of his condition between the first and second examinations? That is to say, whether there was improvement, or whether he was getting worse.
[fol. 35] A. He improved very much after he had his lung collapsed, and showed continual improvement.
Q. In other words, his disability was less in May, 1923, than it was in the previous December? A. Yes sir.

Q. You have not seen him since then?

A. Not to examine him, no sir.

Q. In what respect was he better?

A. He followed the usual rule in cases of collapse of the lung. When there is activity in one lung and it is collapsed, that activity, or the signs and symptoms of that activity disappear. As to the condition of the lung which is collapsed, no one can say until the lung is expanded again.

Q. What do you say with regard to other symptoms? Did his weight increase?

A. As I remember, yes.

Q. That is an important indication in tuberculosis, is it not?

A. It is a good sign, yes.

Q. What can you say as to his ability to do any work, or earn his living in any respect during that time? Did the injury to his health prevent him from doing some work of some kind?

A. That is rather hard to say. As long as the lung is kept collapsed and there is no sign of activity in the other lung, they can do light work, under observation.

Q. In other words, he could have gone out and earned a little money provided he took care of himself and was given medical advice from time to time?

A. Yes, with the collapse continuous.

Q. And the light work would not have interfered with the condition of collapse?

A. No sir.

Q. At no time was his right lung involved in any way?

A. Not during my observation.

Q. He had complete and full use of that?

A. Yes sir.

Recross-examination.

By Mr. Lawler:

Q. You stated the symptoms of improvement after the collapse of his lung. What were the symptoms to which you referred?

A. Probably a little gain in weight, disappearance or diminution of temperature, general picking up in general health, his appetite better.

Q. What causes rise of temperature in tubercular cases?

A. Usually continuous activity.

Q. Does tubercular disease produce toxemia in the system?

A. Usually yes.

[fol. 36] Q. Is the increase in pulse due to toxemia? I mean increase in temperature?

A. Probably.

Q. By collapse you temporarily withdraw the lung from use?

A. Yes.

Q. That prevents toxemia from getting into the system to the same extent that it got in before collapse; is that a fact?

A. Yes.

Q. The increase in weight and the improvement in pulse and temperature are the result of that fact?

A. Yes.

Q. That is, the decrease of toxemia in the system?

A. Yes.

Q. Is there any way of telling whether a man's health, that is, whether he would still be affected by toxemia if his lungs were not collapsed?

A. Not until you allow the lung to expand again.

Q. You never examined this man to find out whether his pulse and temperature were up after his collapse was terminated?

A. No.

Q. Do you know whether his lung has expanded since?

A. I do not.

Q. With reference to work which a person with activity and collapsed lung can do, would you recommend, for any patient, that he go out and secure a job for wages?

A. Not unless he had to.

Q. Would that, in all probability, injure his health?

A. There is a chance he might.

Q. Is there a probability that it would?

A. That would depend largely on the class of work and the amount of work. There are times when he could probably work, and times when he possibly could not work. He would have to be under observation.

Q. Is strain, and exercise generally, bad for persons who have active tuberculosis?

A. At most stages.

Q. What is your idea of treatment for tuberculosis? What is the best treatment?

A. Rest during the active stage and graduated exercise.

Q. Is that the treatment which you recommend for the plaintiff in this case?

A. It was.

Q. Could you, in sound medical judgment, recommend to this plaintiff that he go out and secure light work for wages, which would require him to put in certain number of hours every day?

A. I would not.

Q. And you did not do it, as a fact?

A. No.

Mr. Lawler: That is all.

Mr. Owens: That is all.

[fol. 37] C. L. Beaven, a witness called and sworn on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Owens:

Q. State your name, please.

A. C. L. Beaven.

Q. Your occupation, or business or profession.

A. Major Medical Corps, United States Army.

Q. Where are you stationed, Fitzsimons General Hospital?

A. Yes.

Q. Were you there in the year 1923?

A. Yes.

Q. Did you have occasion to render a physical examination upon one Robert G. Meadows?

A. I did.

Q. Can you identify Mr. Meadows?

A. I can.

Q. Is he (pointing) the gentleman you examined in 1923?

A. Yes.

Q. What kind of examination did you render?

The Court: What date in 1923?

Q. What date in 1923 did you examine him?

A. I will have to refresh my memory from the clinical record. (Clinical record handed to witness) I examined Mr. Meadows on July 12, 1923.

Q. General physical examination, was it?

A. Complete physical examination.

Q. What did you find?

A. I found him suffering from tuberculosis, pulmonary, chronic, active, both lobes left, inactive right upper, cavity left upper. That is the first, or No. 1. This is No. 2; Pneumothorax, complete, artificial, left.

Q. What would you say you found, if anything, in the right lung?

A. Nothing in the right lung. I beg your pardon. I take that back. Inactive right upper.

Q. Any cavitation?

A. No, no mention of cavity on that side; cavity on the left side.

Q. Did you make any recommendations at that time to the Surgeon General concerning discharge of this man?

Mr. Lawler: We object.

The Court: Sustained.

Q. Was Mr. Meadows at that time able to carry on any light work, in your opinion?

A. Not over any long period.

Q. Could he do light clerical work, in your opinion under observation?

[fol. 38] Mr. Lawler: We object, incompetent and irrelevant.

The Court: Overruled.

Mr. Lawler: Exception.

A. I would like to qualify my answer by stating that an examination of this kind, that I made of Mr. Meadows, was a part of my duty as member of the Disability Board, and that examination consists in reviewing all the previous clinical records, such as X-rays, and making a physical examination; but for me to answer this question satisfactorily, I would have to have known Mr. Meadows as a patient over a long period of time, and I would rather not express an opinion.

Q. How long have you been in the army?

A. I am on my fifteenth year.

Q. What school did you graduate from?

A. Baltimore Medical College.

Q. Have you specialized in tuberculous disease to any extent?

A. I was on duty at tuberculous hospitals from November, 1920, until June, 1926.

Q. Is there a medical definition known to the medical profession concerning permanent total disability for a man?

A. I believe the Veterans Bureau have some regulations that govern that. Just what it is I do not know.

Q. How long did you say you specialized in tuberculous work?

A. About seven years.

Q. Have you had occasion to observe a considerable number of tubercular patients during that period?

A. Quite a number; quite a large number, yes.

Mr. Lawler: We will admit his qualifications as an expert.

Q. Assuming that a patient's left lung is collapsed, with slight activity in the right upper, would you say that that patient would never be able to carry on at any gainful occupation again?

Mr. Lawler: We object. No foundation laid; not pertaining to the issues of the case.

The Court: He said he had an inactive right. You said active right.

Q. Assuming he has an inactive right. Assuming, further, that his condition had slightly improved in December, up to the time you examined him; assuming, further, that he had increased in weight slightly;—would you say, then, [fol. 39] that that patient would never be able to again carry on at any substantially gainful occupation?

Mr. Lawler: We object as irrelevant, no bearing on the issues of this case.

The Court: Overruled.

Mr. Lawler: Exception.

A. No, I would not.

Q. You would not say that, under those circumstances, that this patient would never carry on any substantially gainful occupation?

A. No, I would not say that he could not.

Q. On your examination of Mr. Meadows at that time did you find tubercular complications, other than those you have mentioned?

A. No. If there had been any I would have it here over my signature.

Q. If there had been, you would have found it and made record of it?

A. Yes.

Mr. Owens: That is all.

Cross-examination.

By Mr. Lawler:

Q. In answer to the last hypothetical question you stated that you could not say that this man would never again be able to carry on continuously a substantially gainful occupation.

A. Yes.

Q. Could you tell at that time that he would be able to?

A. At the time I examined him?

Q. Yes.

A. I could not.

Q. Assuming that a man has active tuberculosis in December, 1922, that some time prior to March, 1923, his lung is collapsed, and assuming that he has been in the hospital continuously from that time until July 12, 1923, at the time of your examination, could you tell whether, from that evidence, a man will be able to work in the future?

Mr. Abel: We object. It does not conform to the facts in this case. Immaterial.

The Court: Overruled. A man can frame his own hypothetical question and you can frame yours.

Mr. Abel: Exception.

A. No, I could not.

Q. You found active tuberculosis at the time of your examination in July, 1923?

A. Yes.

Q. Did you recommend that the plaintiff work, at the time of your examination?

[fol. 40] A. I would strongly urge against it.

Q. If the plaintiff had worked at that time, would it probably have injured his health?

A. I would say it would be most likely to.

Q. What treatment did you prescribe for him?

A. He did not come to me for me to prescribe for him. I was not his attending surgeon; he merely came for examination when I was a member of the Disability Board.

Q. This examination was made at Fitzsimons General Hospital?

A. Yes.

Q. And the plaintiff at that time was a patient?

A. Yes.

Q. Do you know whether he was working or not at that time?

A. I don't think he was. No, I couldn't say. Not likely that he was.

Q. Was he provided in the hospital with a bed and room?

A. He was.

Q. And did he not leave to go down town, or anywhere else, to work?

A. I am quite sure that he did not.

Mr. Lawler: That is all.

Redirect examination.

By Mr. Owens:

Q. The simple fact that you would not recommend that he work in July does not mean that you found from his physical condition that he would never be able to work?

A. No, I would not say that he would never be able to work, but he might be.

Mr. Owens: That is all.

Recross-examination.

By Mr. Lawler:

Q. Did you ever examine the plaintiff after July, 1923?

A. I see no mention of it here in the record, and it is not likely that I did.

Mr. Lawler: That is all.
Mr. Owens: That is all.

J. D. Barnwell, a witness called and sworn on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Owens:

Q. State your name, please.
A. John D. Barnwell.
Q. Your profession?
[fol. 41] A. Captain Medical Corps, United States Army.
Q. Where are you stationed?
A. Fitzsimons General Hospital.
Q. Are you acquainted with the plaintiff in this case, Robert G. Meadows?
A. I am.
Q. Can you identify him in the court room?
A. I can.

(Thereupon papers were marked for identification plaintiff's Exhibits N, O, P, Q and R, respectively.)

Q. You are in the Medical Corps?
A. Yes.
Q. How long have you been in the Medical Corps?
A. About ten years.
Q. Do you specialize in any particular branch?
A. X-ray.
Q. I hand you plaintiff's Exhibit N and ask you to state, if you know, what that is.
A. X-ray plate of Robert Meadows.
Q. Plaintiff in this case?
A. Yes.

Mr. Lawler: We will agree that those are the X-ray plates of Robert G. Meadows.
Mr. Owens: We offer Exhibits N to R in evidence.
The Court: They will be admitted.

Q. Will you read the findings of the X-ray to the court? Explain the pictures.

A. Exhibit N, this film shows collapse of the left lung for pneumothorax; shows what appears to be a small cavity in the upper part of the lung; shows no fluid present in the left side of chest. The detail in the lung on this examination is too much blurred by breathing to show clearly. No involvement of the right side.

Q. When was that picture taken?

A. This was made March 2, 1923.

Q. Did you take another X-ray picture of him subsequent to that?

A. I did not, myself.

Q. Did you take one previously, I mean?

A. Yes, one was made previously but could not be located.

Q. I hand you Exhibit O and ask you to explain that.

A. This is an X-ray film of Robert G. Meadows, made February 20, 1924.

Mr. Owens: We withdraw that, your Honor. We did not know it was that far on.

Q. State if you know, which of these were taken between December, 1922 and August, 1923? (Witness indicates.)

[fol. 42] Mr. Owens: We would like to withdraw the offer of Exhibits Q, R, P and O. That is all.

Mr. Lawler: No cross-examination.

Mr. Owens: We offer Exhibit S, which is the Veterans Bureau regulations regarding permanent total disability.

Mr. Lawler: We are willing to concede that the court has judicial notice of that. It was passed pursuant to authority and is in force and effect as law.

E. B. Maynard, a witness heretofore sworn, recalled on behalf of plaintiff, further testified as follows:

Direct examination.

By Mr. Owens:

Q. I hand you plaintiff's Exhibit L and ask you to state, if you know of your own personal knowledge whether or not it is a correct record of clinical findings of Robert G. Meadows at Fitzsimons General Hospital?

A. It is in my custody as a correct clinical record. As I said, these were all made before I arrived at Fitzsimons Hospital.

Q. It covers the period, particularly, from February 21, 1923, to——

Mr. Lawler: Just a minute. We object. The record is not in evidence.

The Court: The record is not in evidence.

Q. You are custodian of those records?

A. Yes.

Q. And that is part of the record in Fitzsimons Hospital of this claimant?

A. It is.

Mr. Owens: We offer Exhibit L in evidence.

Mr. Lawler: We object; incompetent, irrelevant and immaterial; not the best evidence; not pertaining to any of the issues in the case.

Mr. Owens: I would like to ask just one more question of the witness.

Q. Do you recognize the various signatures on those slips?

A. I recognize my own, Captain Kirby, Major Rice, Major Beaven.

Mr. Owens: We offer Exhibit L in evidence.

[fol. 43] Mr. Lawler: We object.

The Court: Not properly proven; it will be excluded.

Mr. Owens: Exception.

Q. I hand you plaintiff's Exhibit M and ask you what that is, if you know?

A. It is the current clinical record of Robert G. Meadows, and papers, including extract from service record and various letters that were written in regard to this patient, and Veterans Bureau reports, that is, reports made to the Veterans Bureau.

Q. And those records are in your official custody at the Fitzsimons General Hospital?

A. All but the current record. That is in the custody of the ward in which he was a patient.

Q. They are permanent Government records?

A. Permanent Government records.

Mr. Owens: We offer Exhibit M in evidence.
Mr. Lawler: We object.
The Court: Objection sustained.
Mr. Owens: Exception. That is all.
Mr. Lawler: No cross-examination.

Robert G. Meadows, plaintiff, recalled in his own behalf, further testified as follows:

Direct examination.

By Mr. Owens:

Q. Mr. Meadows, how did you feel the first two or three months after Christmas 1923? Say January, February, March and April.

A. Felt the same all the time; pretty good at times and pretty badly at times.

Q. Did you ever go down town during that period?

A. I don't remember going down.

Q. Did you walk around?

A. In the ward.

Q. Could you have done any light work had you felt so disposed?

Mr. Lawler: We object; incompetent, irrelevant and immaterial.

The Court: Ask him what he did.

[fol. 44] Q. When you left the army in August, did you have to leave on account of your condition, or could you have continued on?

A. Well, that was not for me to decide. The C. D. D. Board decides that.

Q. Did they make you leave the army?

A. They recommended that I leave.

Q. That you not leave?

A. That I should leave.

Q. Would they have let you stay had you wanted to?

A. I don't know.

Mr. Owens: That is all.

Cross-examination.

By Mr. Lawler:

Q. This was in August, 1923?

A. The examination was in July, the 12th, and I was discharged on August 2d, 1923.

Q. When did you go to Fitzsimons General Hospital?

A. Arrived at Fitzsimons Hospital from Washington, D. C., on November 28, 1922.

Q. How long did you remain in Fitzsimons General Hospital?

A. I have been readmitted two or three times.

Q. After your first admission?

A. First admission was November 28th. Until August 2, 1923.

Q. November, 1922, to August, 1923?

A. Yes sir.

Q. How long did you work after you left the hospital?

A. I didn't leave; I was readmitted as a beneficiary of the Veterans Bureau.

Q. Same day?

A. Following day.

Q. How long did you remain in the hospital then?

A. Remained in the hospital until 1924 or 1925. I am not sure.

Q. Are you in the hospital at the present time?

A. Yes.

Q. Approximately how many months have you been out of the hospital since you went in in November, 1922?

Mr. Owens: We object as immaterial.

The Court: Overruled.

A. About six months all told.

Q. Were those six months before or after January, 1924?

A. They were after.

[fol. 45] Q. In other words, you were hospitalized continuously from November, 1922, until at least January, 1924?

A. Yes sir.

Q. Did you work at any gainful occupation from November, 1922?

A. I didn't work on salary; I worked in the ward for exercise.

Q. Around the hospital?

A. Yes. I was on graduated exercise.

Q. That was part of your treatment?

A. Treatment, yes.

Mr. Lawler: That is all.

Mr. Owens: That is all. We rest.

Thereupon the plaintiff rested his case.

Thereupon a recess was taken until two o'clock.

After Recess, Two P. M.

MOTION TO DISMISS

Mr. Lawler: If the Court please, we move at this time for dismissal of plaintiff's cause of action; First, because of the insufficiency of the evidence to establish a prima facie case; Secondly, because the evidence affirmatively shows that plaintiff was permanently and totally disabled at and prior to the time of his application for reinstatement; and, Thirdly, because the plaintiff has not shown that he was entitled to reinstatement of the $7,000 of lapsed insurance in question, under the provisions of section 408 of the War Risk Insurance Act, or section 304 of the World War Veterans Act, for the reason that there is no allegation or evidence, showing or tending to show that he submitted proof satisfactory to the Director of the United States Veterans Bureau that he was not permanently and totally disabled.

The Court: I would like to hear from the other side on that third ground. What have you to say on that?

Thereupon the court heard arguments of counsel; at the conclusion of which the court denied said motion of defendant for dismissal of plaintiff's cause of action, to which ruling of the Court the defendant then and there duly excepted.

Mr. Lawler: If the Court please, the Government rests. We have no further evidence in this case. All of the Government witnesses have been called and have testified in behalf of plaintiff.

[fol. 46] Thereupon the defendant rested its case.

Thereupon the plaintiff rested his case.

The above and foregoing, with accompanying exhibits constitutes all the evidence offered, given and received in this case, on behalf of both plaintiff and defendant.

OPINION

Thereupon the court delivered the following oral opinion:

SYMES, D. J.:

Section 5 of the World War Veterans Act gives the Director plenary power to administer, execute and enforce the provisions of the Act and full power and authority to make rules and regulations not inconsistent with the Act. It is agreed that, pursuant to that power, the Director made a definition of what permanent total disability should be under the provisions of this Act, and we must therefore look to his regulations and definition of that term in construing section 304.

The Government has offered no evidence in this case. The sole question, therefore, is whether the medical testimony of the plaintiff is sufficient to sustain the burden upon the plaintiff of proving that the plaintiff was not, in February, 1923, when he made his application for reinstatement of $7,000 of insurance that he allowed to lapse, permanently and totally disabled. In other words, we are required to pass upon the action of the Director taken under section 304. I think section 19 justifies this court in entertaining this suit, under circumstances disclosed. Further than that, section 5 seems to contemplate, and in fact provides that all decisions of questions of fact affecting any claimant

to the benefits of Title II, III or IV of the Act shall be conclusive, except as otherwise provided. The term "otherwise provided," I think has reference to section 19.

Referring to section 7035 of Regulation No. 73 of the Veterans Bureau, dated July 29, 1924, we find the medical definition of permanent total disability, when pulmonary tuberculosis is involved. Subsection 2 says, in effect, that tuberculosis, such as admittedly the plaintiff here had, could be considered permanent and total, when there is active pulmonary tuberculosis with continuous and progressing toxæma, as indicated by loss of weight, emanciation, elevation of temperature for a period of twelve months [fol. 47] with no improvement under proper supervision and treatment, and when it appears that the claimant will be unable continuously to follow a substantially gainful occupation.

There is no evidence in this case that the plaintiff had progressing toxaemia, or that he had any loss of weight, or any elevation of temperature. The evidence is that over a period beginning in December, 1922, and over into May or June, 1923, he showed a little progress. The most that could be said for the Government is that his condition was stationary. One of the medical experts who was put on the stand testified that during that period of time he improved a little, gained a little in weight. I do not see that there is any evidence at all that his disease was progressive or that he was getting worse, or that his case came within the definition that I have referred to. The evidence is that there was a slight increase in weight.

Some emphasis has been laid upon the fact that his lung was collapsed. As I understood the gentleman who testified on the witness stand, that is the result of the treatment and not an indication or symptom of disease, or if its progress. In other words, his lung was collapsed as a part of the treatment, and as a result he probably improved, if anything. It is also important to note that the tuberculosis did not affect his right lung. With the exception of one doctor, I think they all stated that his right lung was perfectly normal. It is hard to conceive that a man is permanently and totally disabled when he has one good lung. We can, I think, take judicial notice of the fact that there are hundreds of people in Colorado with only one

good lung, who are earning a living and sustaining themselves.

It seems to me that the action of the Director in grading this man as permanently and totally disabled was erroneous. Of course, the proof submitted to him may have been different from that before this court. We can only judge the case by the evidence submitted here. None of these doctors who have testified would say that this man is not capable of earning a livelihood, to a small extent. He will be under some permanent physical disadvantage, but that is true of thousands of people who are walking the streets and earning a living. Very few of us are a hundred per cent physically perfect. Most people have some disability.

The term "Total and permanent" is a very broad, expressive statement of one's physical condition. To me the word "permanent" means that there is no hope of im-
[fol. 48] provement or recovery; and the word "total" that the disability is complete. How can it be said that a man is totally disabled when he is up and about, doing a little work and performing graduated exercises under the direction of a physician, as the testimony shows this plaintiff was doing and was directed to do by the doctors at the hospital, experts fully able and competent to pass upon his case? I am of the opinion that there is no evidence that he was totally and permanently disabled within the definition given by the defendant itself, through the Director.

Judgment may, therefore, be entered in favor of the plaintiff and against the defendant.

Mr. Lawler: We except to the findings of the court.

Plaintiff's Exhibits

EXHIBIT A

United States Veterans Bureau, Washington.

July 6, 1925.

In reply to refer to: FABA. C-636,684.

Mr. Robert G. Meadows, Fitzsimons General Hospital, Denver, Colorado.

DEAR MR. MEADOWS: With further reference to your letter of May 25, 1925, regarding your appeal for a permanent

and total rating for insurance purposes from January, 1918, please be advised that on June 27, 1925, the Central Office Board of Appeals rendered a decision, holding the evidence in file is insufficient to show that your disability is ratable as permanent and total prior to August 2, 1923.

Accordingly, your appeal for a retroactive permanent total rating has been denied.

For the director.

Charles E. Mulhearn, Assistant Director.

[fol. 49] EXHIBIT B

United States Veterans Bureau, Washington.

August 6, 1925.

In reply Refer to: FABA. C-636684.

Mr. Robert G. Meadows, Fitzsimons General Hospital, Fitzsimons, Colorado.

DEAR SIR: Receipt is acknowledged of your letter of July 31, 1925, regarding the insurance status of your case.

In reply thereto please be advised that at the time the application for reinstatement and conversion of the $7,000 insurance was submitted, the evidence was sufficient, in the opinion of the Officials of the Bureau, to show that you were permanently and totally disabled. Accordingly, your application for reinstatement and conversion was rejected.

A subsequent decision of the Board of Appeals holds that at that time the disability was not in fact shown to be permanent and total. However, since rejection was made you have been declared permanently and totally disabled, and reinstatement cannot be effected under existing legislation at this time.

All future communications relative to this case should bear the number C-636684.

For the director,

Charles E. Mulhearn, Assistant Director.

EXHIBIT D

Form 561A, File No. C

Compensation Disability

United States Veterans' Bureau

Award of Compensation

To Mr. Robert G. Meadows, C-636684, Fitzsimons General Hospital, Fitzsimons, Colorado:

In accordance with the Act of Congress of October 6, 1917, and the amendments thereto, you are hereby notified [fol. 50] that as a 1st Sgt., Co. D, who was discharged from the military service of the United States on the 2nd day of August, 1923, you are awarded compensation in the amount of one-hundred dollars per month, from the 3rd day of August, 1923, on account of disability resulting from injury incurred in the line of duty while employed in the active service.

Important Provision of the Act

"Sec. 28. That the allotments and family allowances, compensation, and insurance payable under Article II, III and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Articles II, III, and IV, and shall be exempt from all taxation; Provided, That such allotments and family allowances, compensation, and insurance shall be subject to any claims which the United States may have, under Article II, III, and IV, against the person on whose account the allotments and family allowances, compensation, or insurance is payable."

If you should change your present address, the Claims Division, United States Veterans' Bureau, Washington, D. C. must be immediately notified. All future communications with reference to this case must bear the Compensation Number C636684.

By authority of the Director:

This 5th day of January 1924.

Charles E. Mulhearn, Assistant Director, Claims Division, United States Veterans' Bureau, by I. M. W.

EXHIBIT E

United States Veterans Bureau, Washington

April 7, 1923.

In reply Refer to T-300,952, C-636,684, 7-C-WER/lap.

Mr. Robert G. Meadows, Fitzsimons General Hospital, Fitzsimons, Colo.

[fol. 51] DEAR SIR: With further reference to your application for reinstatement of insurance granted you under Certificate Number T-300,952 and remittance of $191.13, forwarded by E. P. York, Field Director The American Red Cross, Fitzsimons General Hospital, under date of March 5, 1923, to be applied in connection with your application you are advised the medical evidence on file in the Bureau and that submitted with your application shows you are now permanently and totally disabled.

Section 408 of the War Risk Insurance Act provides for reinstatement if the insured is suffering from a disability incident to or aggravated by the service but not permanently and totally disabled, upon the payment of all premiums in arrears with interest at five per cent per annum compounded annually.

In view of the above, your application for reinstatement cannot be approved and the above mentioned remittance of $191.13 is returned to you.

By direction.

C. A. Pennington, Assistant Director, Insurance Division.

EXHIBIT F

United States Veterans Bureau, Washington

December 18, 1923.

In reply Refer to O. 33. C-636 684. Robert G. Meadows.

Mr. Robert G. Meadows, Fitzsimons General Hospital, Denver, Colorado.

DEAR SIR: Replying further to your letter of November 30th, you are informed that your tubercular disability has

been rated as permanent total from August 2, 1923. However, it will not be possible to prepare an award until re-
[fol. 52] port of physical examination requested under date of December 10th has been returned and considered.

By direction.

Charles E. Mulhearn, Assistant Director Claims Division.

EXHIBIT G

United States Veterans Bureau, Washington

December 31, 1923.

In reply Refer to C & C WTH:IH. C-636 684. Meadows, Robert G., Sgt. 1/c Co. 1 12th Inf.

Office of District Manager, District No. 11

Mr. Robert G. Meadows, Fitzsimons General Hospital, Fitzsimons, Colorado.

Through—Contact Officer

DEAR MR. MEADOWS: In connection with your claim for compensation kindly be advised that this office is in receipt of a communication from the Central Office which indicates that your disability is rated as permanent and total on and after August 2, 1923. As long as this rating remains in effect, your complete file will be retained in the Central Office.

Section 303 of the Act provides for the forfeiture of compensation for failure to report for examination, and you should, therefore, always advise this office of any change of address on your part. Also, all future communications relative to this case should bear your full name, address, rank and organization, as well as the number C-636 684.

By direction.

J. G. Burleson, Chief Claims Division.

[fol. 53] EXHIBIT H

United States Veterans Bureau, Washington

February 14, 1924.

In reply Refer to O 325. C-636 684 K-156 795. Meadows, Robert G. RPMcC/jac.

Mr. Robert G. Meadows, Fitzsimons General Hospital, Denver, Colorado.

DEAR SIR: In reply to your letter of February 4, 1924, relative to a refund of premiums paid subsequent to the commencing date of award of permanent and total disability benefits, you are advised that the records of the Bureau show that the award is effective from February 21, 1923 and the Bureau is entitled to premiums to include the month of February 1923. Premiums deducted from your service pay for the months of February, March, April, May and June 1923, paying premiums for March, April, May, June and July 1923, have been refunded to you There is no further refund due.

All communications relative to this case should bear the file numbers C-636 684 and K-156 795.

For the Director.

Charles E. Mulhearn, Ass't Director in Charge of Claims and Insurance Service.

EXHIBIT I

Form 55g

Medical Department, U. S. Army

(Authorized Jan. 17, 1916)

Clinical Record

Progress

(All complications, and all changes in diagnosis, with the date in each case, should be entered on this sheet.)

[fol. 54] Receiving Ward. Dec. 3, 1922. Meadows, Robert G., 1st Sgt. Co. "I" 12th Inf.

1. Tbc pul chr active upper lobe left, and upper part of left lower lobe. Cavitation left upper lobe.

(Signed:) J. A. Wilson, Major M. C.

Far Advanced (PR).

[B] Most of lesions on left offer old fibrous or caseo fibrous. There may be some new lesions in upper part of left lower: El. or no involvement on rt. a good case for Art Pneu. if progress is not satisfactory.

Affidavit: I, Robert G. Meadows, state that to my knowledge, this paper is an exact and true copy of a document in the files of the Medical Department concerning case of said Robert G. Meadows.

(Signed) Robert G. Meadows.

State of Colorado,
County of Adams, ss:

Personally appeared before me, Robert G. Meadows, who is known by me to be the person who signed the above statement, and who signed the statement above in my presence.

Thomas A. Brinkley, Notary Public. My commission expires Feb. 23, 1930. (Seal.)

Exhibit J

C-1.

Passed the CDD Board July 12, 1923. Findings: 1. Tuberculosis, pulmonary, Chronic, active, both lobes left, inactive right upper, cavity left upper.

2. Pneumothorax, complete, artificial, left.

Disability: 100% Temporary.

C. L. Beaven, Major, M. C., U. S. A.

A true copy. L. F. Putnam, Capt. M. C., U. S. A.
Meadows, Robert G.

(Here follow Exhibits K and S, side folios 55-66)

Plaintiff's Exhibit K

United States of America

United States Veterans Bureau

February 9, 1927

Pursuant to Section 30 of the World War Veterans' Act, 1924, I hereby certify that the annexed photostats of Form 739, Application for conversion of Government War Risk Insurance, signed Robert G. Meadows, January 27, 1920; and Form 742, Application for Reinstatement of Yearly Renewable Term Insurance, signed Robert G. Meadows, February 16, 1923, are true copies of the originals on file in the case of Robert G. Meadows, C-636,686

this Bureau.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States Veterans Bureau to be affixed on the day and year first above written.

Frank T. Hines

FRANK T. HINES
DIRECTOR OF THE
UNITED STATES VETERANS BUREAU

55-56

photostats of Form 739, Application for conversion of Government War Risk Insurance, signed Robert G. Meadows, January 27, 1920; and Form 742, Application for Reinstatement of Yearly Renewable Term Insurance, signed Robert G. Meadows, February 16, 1923, are true copies of the originals on file in the case of Robert G. Meadows, C-636,684

FRANK T. HINES

57-58

Lach 13

[M]EDICAL EXAMINATION

This examination is necessary only when an interval has lapsed for a period of more than three months.

1. APPLICANT'S OWN STATEMENT

1. Date of birth.	2. Place of birth.	3. Color.	4. Single, married, or widowed.
May 19 - 1892	New Jersey	White	Married

5. Family history.	Age if living.	Health good or bad. (If bad, give full details.)	Age at death.	Cause of death.	Age at death.
Father	59	good		died birth	
Mother	55	good.			
Sister (10)					
Sister					
Brother					

6. What operations have you had, if any, and when?	7. Have you ever used alcohol, opium, or other habit-forming drugs to excess?	8. Have you ever used habit-forming drugs?	9. What is your occupation?
Tonsil Clinic, Wis.	No		Soldier

10. Have you been treated for any disease of brain or nerves? No. Fever? No. Epilepsy? No. Insanity? No. Kidney disease? No. Stomach trouble? No. Rheumatism? No. Heart trouble? No. Lung trouble? No. Tuberculosis? No. Asthma? No. Hay fever? No. Skin disease? No. Piles? No. Rupture? No. Varicose veins? No. Any other illness or injury? (Answer "Yes" or "No" in each case. If "Yes," give full particulars, including name and address of physician or hospital in which treatment was received, and approximate dates of treatment.)

Now under treatment for pulmonary tuberculosis

11. Are you fully vaccinated?	12. I hereby certify that my answers to the foregoing questions are true and complete to the best of my knowledge and belief.
No	Signed by applicant in the presence of Medical examiner on this 21 day of Feb, 1923. Robert G Meadows (Signature of applicant)

2. PHYSICAL EXAMINATION'S REPORT

13. Height in shoes.	14. Weight in shoes and clothes.	15. Chest at chest normal.	16. Chest at abdomen.
5 ft. 7 inches	No. of pounds 134 lbs.	Forced expansion 4 ins. Total expansion 3 lbs.	30

17. State vision.	18. Vision corrected or otherwise?
(a) Vision unaided: right eye 6/6 left eye 6/12. (b) Vision after correction: right eye 6/6 left eye 6/6.	Yes 110 No 75 Instrument used

19. After an examination do you find any abnormality of the heart? No. Lungs? No. Any hernia? No. Any varicose veins? No. Any defect of hearing? No. Any other defect, ailment, or chronic disease? No. If "Yes," state which. Tuberculosis of Lungs active Left Side. Left side typical Pneumothorax Left, induced.

20. Blood pressure.	21. Urine examined.	22. Wassermann test.	23. Is applicant free from evidence of venereal disease?
102	Albumin neg Sugar neg	Time used	Date of examination Yes

24. Has applicant ever had epilepsy, fits, or convulsions?	25. Has he ever had delirium tremens?	26. Is he addicted to the use of alcohol to excess?
No	No	No

27. Has he ever had syphilis, local or constitutional?	28. Is he under treatment or has he been treated for any venereal disease?	29. Is he now suffering from any disease of the genito-urinary organs?
No	Yes Tuberculosis	Date of last menstrual period. Is pregnancy suspected?

30. Has applicant ever been under observation for mental disease in any hospital or institution? If so, when and where?

No Tuberculosis Ward Hosp

31. Is he addicted to the habit of masturbation? Has he ever been subject to any sexual perversion? Has he ever had any nervous breakdown? Has he ever had any serious illness not mentioned above? If so, when and where? Has he ever had any surgical operation? If so, what and when? Has he ever had any injury to head or spine? If so, when and what were the results?

Yes

32. Remarks:

Opinion (Not Total & permanent) by

Examination completed this 21 day of Feb, 1923.

Missouri

Capt H Robert Capt MC US

(Signature of examining medical officer.)

(Rank.)

(Address of examining medical officer.)

NOTE.—Should applicant be over-weight, (a) obtain applicant's height and weight stripped, (b) ascertain chest measurement, (c) ascertain whether applicant is a person of sedentary habits, (d) ascertain whether applicant is a person whose habits of life are active, (e) ascertain whether applicant is a person who has recently undergone a material loss of weight, (f) ascertain whether applicant is a person who has been under treatment for obesity, (g) ascertain whether applicant is a person who has been under treatment for any disease, (h) ascertain whether applicant is a person who has been under treatment for any injury, (i) ascertain whether applicant is a person who has been under treatment for any operation, (j) ascertain whether applicant is a person who has been under treatment for any other condition, (k) ascertain whether applicant is a person who has been under treatment for any other condition, (l) ascertain whether applicant is a person who has been under treatment for any other condition, (m) ascertain whether applicant is a person who has been under treatment for any other condition, (n) ascertain whether applicant is a person who has been under treatment for any other condition, (o) ascertain whether applicant is a person who has been under treatment for any other condition, (p) ascertain whether applicant is a person who has been under treatment for any other condition, (q) ascertain whether applicant is a person who has been under treatment for any other condition, (r) ascertain whether applicant is a person who has been under treatment for any other condition, (s) ascertain whether applicant is a person who has been under treatment for any other condition, (t) ascertain whether applicant is a person who has been under treatment for any other condition, (u) ascertain whether applicant is a person who has been under treatment for any other condition, (v) ascertain whether applicant is a person who has been under treatment for any other condition, (w) ascertain whether applicant is a person who has been under treatment for any other condition, (x) ascertain whether applicant is a person who has been under treatment for any other condition, (y) ascertain whether applicant is a person who has been under treatment for any other condition, (z) ascertain whether applicant is a person who has been under treatment for any other condition.

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UNITED STATES VETERANS BUREAU
Form 748 Revised

APPLICATION FOR REINSTATEMENT OF YEARLY RENEWABLE TERM INSURANCE

Medical Examination on the other side is also required

1 MY NAME IN FULL First Robert M. Last Meadows — 2. Term insurance certificate number 300-952

3 HOME ADDRESS (number) (street) (city, town, or post office) (state) R.F.D. 156 795

MAILING ADDRESS Fitzsimons General Hospital, Fitzsimons, Colo.

4. I hereby apply for the reinstatement of $ 7,000.00 term insurance granted to me under the provisions of the War Risk Insurance Act, and I have enclosed to pay the premium for the month of February 1923 or within the grace period of 31 days. As a condition to the reinstatement of this insurance, I do hereby certify that the answers to the following questions are true to the best of my knowledge and belief.

5. Are you in good health at this time and were you in good health on the date of the premium in default? No

6. Are you at present under any treatment for any disability which is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active service of the United States during the World War? (If so, give full details as to the nature of such disability, disease, or injury, where and when contracted, and what treatment, if any, is being received at this time)

Yes - Tuberculosis October 1922 - Ft. Washington, Md. Came in off of a hike and started throwing hemorrages.

C-636-684

1-4-23

No

7. Have you ever made application for Government compensation or pension? If so, state when and where filed and for what disability. 9. Give name of your company.

Yes No

U.S.

10. Have you consulted any doctors or medical authority since issue of this insurance? If so, state full particulars, date, nature, and address of physicians. If none state so.

Yes - Tuberculosis Army doctors and physicians at Ft. Washington, Md. Walter Reed, Hospital and Fitzsimons General Hospital.

11. Have you received a physician as regard to your health since issue of this insurance? If so, state name and address of physician.

Yes - Army Physicians

RECEIVED
Under Sec. 408 of the Act
BY W. S. McClintic
Law Medical Section U.S.

12. It is agreed that the effective date of this reinstatement, if reinstated, shall be the date of the receipt of the application, provided the premium herein applied for is then paid, and provided the applicant complies with the requirements of the Bureau in writing that the effective date shall be the first day of the month in which the application is received, provided the premium

K156795 WAR RISK INSURANCE

APPLICATION FOR CONVERSION OF GOVERNMENT WAR RISK INSURANCE.

MAY 17 1920
RR 13 MAIL SECTION

Application for conversion of the Yearly Renewable Term Insurance issued in accordance with the provisions of the War Risk Insurance Act.

My full name is Robert (First) G. (Middle) Meadows (Last)

Home address 219 E. Ninth St. (No. and street or R.F.D. route) Junction City, (City, town, or P.O.) Kansas. (State)

I was born on May 19th, 1892 (Month) (Year)

Organization at time of applying for War Risk Term Insurance: Flat River, No. Co. "D" 61st Infantry. (Organization, regiment, station, ship, etc.)

1st. Sgt. (Rank or rating)

Present organization or organization at date of discharge:

1st. Sgt. Co. "H" 55th Infantry. (Organization, regiment, station, ship, etc.)

(Rank or rating)

Amount of Government Term Insurance, $ 10,000.00 Monthly premium paid. $ 6.70

Last month for which premium was paid December, 1919.

Certificate No (if known to you) Unknown Army serial number A - 907866 (If such number has been assigned to you)

I apply for United States Government Life Insurance of $ 3,000.00 on the following plan

	ORDINARY LIFE.
X	20 PAYMENT LIFE
	30 PAYMENT LIFE.
	20 PAYMENT ENDOWMENT.
	30 PAYMENT ENDOWMENT.
	ENDOWMENT MATURING AT AGE 62

Put cross mark (X) opposite plan selected.

I will pay premiums

X	MONTHLY.
	QUARTERLY.
	SEMI-ANNUALLY.
	ANNUALLY.

(Put cross mark (X) opposite method selected.)

It is agreed that this insurance is not to be issued or take effect until the application therefor has been approved by the Bureau of War Risk Insurance, and that the insurance applied for shall take effect on the first of the month succeeding the date of the approval of the application, or at the option of the applicant shall take effect on the first day of the current month, but no Yearly Renewable Term insurance payable on the death of the insured during the current month for which the premium hereunder has not been paid shall be in force, and no insurance shall be in force on the life of the insured unless the first premium thereon has been paid.

BENEFICIARY OR BENEFICIARIES OF INSURANCE HEREIN APPLIED FOR IN CASE OF MY DEATH.

RELATIONSHIP TO ME	NAME OF BENEFICIARY (If married woman, her own christian name must be stated) (First) (Middle) (Last name)	POST-OFFICE ADDRESS (a) Number and street (b) City, town, or P.O. and State
Wife	Daisy Gertrude Meadows	a. 219 E. Ninth St. b. Junction City, Kansas.
		c. d. e. f. g. h. i.

SEND POLICY TO WIFE AT ABOVE ADDRESS.

In addition to the insurance above applied for I wish to continue $ of the insurance on the Yearly Renewable Term Plan heretofore granted to me and, in consideration of the granting of the United States Government Life Insurance herein applied for, I hereby agree that all my rights and interests in and to said contract of Yearly Renewable Term Insurance heretofore granted me under the War Risk Insurance Act shall cease and determine on the day the insurance herein applied for shall take effect. The contract of Yearly Renewable Term Insurance which I hereby elect to have shall be in lieu of the following beneficiaries. Any previous designation of beneficiaries is hereby revoked.

BENEFICIARY OR BENEFICIARIES OF YEARLY RENEWABLE TERM INSURANCE HEREIN RETAINED.

RELATIONSHIP TO ME	NAME OF BENEFICIARY (If married woman, her own christian name must be stated) (First) (Middle) (Last name)	POST-OFFICE ADDRESS (a) Number and street (b) City, town, or P.O. and State
		a. b. c. d.

LAST DEDUCTION FOR WAR RISK INSURANCE WILL BE MADE ON JANUARY 1920 PAYROLL.
SECOND MONTHLY PREMIUM ON CONVERTED INSURANCE WILL BE DEDUCTED ON MARCH 1920 PAYROLL.

Executed at CAMP FUNSTON, KANSAS.

By me, (Signature) R. H. TAYLOR, JR. 2nd. Lieut. Infantry, U.S.A. CAMP INSURANCE OFFICER.

(SIGN HERE) Robert G. Meadows

I have herewith remittance payable to the TREASURER OF THE UNITED STATES by (Draft / Money Order / Check) in the amount of $ 5.94 to cover the first monthly premium on the converted insurance.

(SIGN HERE) Robert G. Meadows

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300-452

Plaintiff Exhibit "S"

CHIEF, REHAB. SECTION,

DENVER SUB-OFFICE.

U.S. VETERANS BUREAU July 29, 1924.

REGULATION NO. 73.

Subject: RATING OF TUBERCULOUS DISEASES.

By virtue of the authority contained in Section 5 of the World War Veterans' Act, approved June 7, 1924, the following Regulation, effective August 13, 1924, is issued relative to the general principles to be observed in rating tuberculous diseases, cancelling and superseding Sections 7030 to 7041 inclusive of Regulations, U.S.V.B., 1923, to read as follows and to be incorporated in Regulations, 1923, as Sections 7031 to 7037 inclusive.

Frank T. Hines

FRANK T. HINES,
Director.

[fol. 67] PLAINTIFF EX. "S"

Regulations U. S. V. B. 1923

Section 7031. Where no disease or injury is shown to have occurred during active military or naval service in the World War, on or after April 6, 1917, and before July 2, 1921, that could by scientific criteria be considered as a usual and proximate cause of tuberculous disease, and where an active tuberculous disease of ten per cent degree or more in accordance with the U. S. Veterans' Bureau Schedule of Ratings is shown to have developed prior to January 1, 1925, such active tuberculous disease will be considered as incident to service, in accordance with the second proviso of Section 200 of the World War Veterans' Act, approved June 7, 1924.

(a) The showing of active tuberculous disease of ten per cent degree or more prior to January 1, 1925, will be contingent upon reports of physical examination, physician's statements and acceptable lay affidavits, citing the facts that would demonstrate the existence of such condition. Lay affidavits when relevant, competent and material, will be given due consideration in connection with the other evidence submitted; such affidavits to be acceptable must be confined to statements of fact and not of opinion.

(b) In all cases of active tuberculous disease where the facts submitted in substantiation of the claim do not show that the disability was incurred in or aggravated by service, and where there is no showing of tuberculous disease of ten per cent degree of disability or prior to January 1, 1925, a finding will be made that the disability is not connected with service.

Section 7032. In all cases where the facts submitted do show that the tuberculous disability was incurred in or aggravated by service, the condition will be considered as directly connected with service.

Section 7033. A diagnosis of Active Pulmonary Tuberculosis will be considered as established where two or more of the following findings are shown:

(a) Sputum positive for tubercle bacilli.

(b) Pleurisy with effusion.

(c) Cavity or pneumo-thorax diagnosed by stereogram and physical examination.

(d) Active tuberculous lesion evidenced by definite physical findings indicating a tuberculous involvement, most [fol. 68] characteristic of which are typical indeterminate, localized, persistent, moist rales, (commonly called crepitant and subcrepitant), in the upper lobes, increased or manifested on the first inspiration after a forced expiration followed by a cough.

(e) X-ray findings, of which roentgenograph stereograms manifesting cottony densities, cirrus clouding, or areas of rarefaction surrounded by annular shadows interpreted as cavities, diagnostic of tuberculous infiltration, caseation, or savitation, are the most important. (Unsupported X-ray findings will not, however, be accepted as conclusive evidence of activity.)

(f) Active tuberculous lesion, evidence by definite toxaemia of probable tuberculous origin, manifested by one or more of the following symptoms: fever, loss of weight and rapid "resting" pulse.

Section 7034. The following signs will not be regarded as evidence of pulmonary disease in the absence of other signs in the same portion of the lungs.

(a) Slightly harsh breathing, slightly prolonged expiration over the right apex above the clavicle anteriorly and to the third dorsal vertebra posteriorly. The same signs at the extreme apex, left side.

(b) Same signs second interspace right, anteriorly, near sternum (proximity of right main bronchus).

(c) Increased vocal resonance, slightly harsh breathing immediately below center of left clavicle.

(d) Fine crepitations over sternum, heard when stethoscope touches the edge of that bone.

(e) Clicks heard during strong respirations or after cough in the vicinity of the sterno-costal articulations.

(f) The so-called atelectatic rales heard at the apex during the first inspiration which follows a deeper breath than usual, or a cough.

(g) Sound resembling rales at base of lung (marginal sounds) especially marked in right axilla, limited to inspiration.

(h) Similar sounds heard at apex of heart on cough. (lingula)

(i) Slightly prolonged expiration at left base posteriorly. [fol. 69] (j) Very slight harshness of respiratory sounds with prolonged expiration in the lower paravertebral regions of both lungs posteriorly, most marked at above angle of scapula, disappearing a short distance above that point, equal on both sides, or slightly more marked at the angle of one side, more frequently the left.

(k) In the presence of a strongly positive Wassermann reaction and in cases of hookworm disease with ova demonstrated in the feces, the presence of moist rales in the chest will not be considered in itself as a diagnostic sign of active pulmonary tuberculosis.

Section 7035. Permanent and Total. Pulmonary tuberculosis will be considered permanent and total under the following conditions:

(a) When active pulmonary tuberculosis with continuous and progressing toxaemia, as indicated by loss of weight, emaciation, elevation of temperature, etc., has continued throughout a period of 12 months or longer with no improvement under proper supervision and treatment, and when it appears that the claimant will be unable continuously to follow a substantially gainful occupation. The rating of permanent total disability will be made beginning as of the date that examination report shows the claimant to be unimproved after the one year's continuous observation and treatment, upon which the opinion of inability to follow a substantially gainful occupation is predicated.

(b) Pulmonary tuberculosis, active, involving both lungs, with large cavity formation in one or more lobes. The rating for permanent disability will begin as of the date proper examination, physical and X-ray, has shown the existence of such condition.

(c) Active pulmonary tuberculosis associated with serious tuberculous complications, such as tuberculous ulcerative laryngitis, or tuberculoses of the intestinal tract, or tuberculosis of the genitourinary tract, or tuberculosis of the peritoneum, or tuberculosis of the bones or joints, or tuberculosis of the meninges, or acute military tuberculosis, when diagnosed by approved methods. The rating of permanent total disability will begin as of the date that proper

(c) Cavity or pneumo-thorax diagnosed by stereogram and physical examination.

(d) Active tuberculous lesion evidenced by definite physical findings indicating a tuberculous involvement, most [fol. 68] characteristic of which are typical indeterminate, localized, persistent, moist rales, (commonly called crepitant and subcrepitant), in the upper lobes, increased or manifested on the first inspiration after a forced expiration followed by a cough.

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(i) Slightly prolonged expiration at left base posteriorly. [fol. 69] (j) Very slight harshness of respiratory sounds with prolonged expiration in the lower paravertebral regions of both lungs posteriorly, most marked at above angle of scapula, disappearing a short distance above that point, equal on both sides, or slightly more marked at the angle of one side, more frequently the left.

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Section 7035. Permanent and Total. Pulmonary tuberculosis will be considered permanent and total under the following conditions:

(a) When active pulmonary tuberculosis with continuous and progressing toxaemia, as indicated by loss of weight, emaciation, elevation of temperature, etc., has continued throughout a period of 12 months or longer with no improvement under proper supervision and treatment, and when it appears that the claimant will be unable continuously to follow a substantially gainful occupation. The rating of permanent total disability will be made beginning as of the date that examination report shows the claimant to be unimproved after the one year's continuous observation and treatment, upon which the opinion of inability to follow a substantially gainful occupation is predicated.

(b) Pulmonary tuberculosis, active, involving both lungs, with large cavity formation in one or more lobes. The rating for permanent disability will begin as of the date proper examination, physical and X-ray, has shown the existence of such condition.

(c) Active pulmonary tuberculosis associated with serious tuberculous complications, such as tuberculous ulcerative laryngitis, or tuberculoses of the intestinal tract, or tuberculosis of the genitourinary tract, or tuberculosis of the peritoneum, or tuberculosis of the bones or joints, or tuberculosis of the meninges, or acute military tuberculosis, when diagnosed by approved methods. The rating of permanent total disability will begin as of the date that proper

examination, physical and X-ray, shows such complications to exist.

(d) Active pulmonary tuberculosis, far advanced, with involvement of three or more lobes, and evidence of marked tuberculous toxaemia. The rating of permanent total dis- [fol. 70] ability will begin as of the date of examination, physical and X-ray, shows such lung involvement and tuberculous toxaemia are present.

(e) Claimants carrying a permanent total disability award for active tuberculosis, pulmonary or otherwise will be re-examined at intervals of eighteen months, and the award continued or reduced in accordance with the findings at such re-examinations will be made by a board in accordance with the provisions of Regulation 47.

Note: The conditions defined in the foregoing paragraphs (a) to (d) as representing permanent total disability are intended as clinical pictures for the better guidance of rating officers in arriving at a judgment of what constitutes permanent total disability from pulmonary tuberculosis. However, they are not to be considered to the exclusion of the provision of Regulation No. 4 (B IV (b)). On the contrary, the criteria in that regulation, i. e., that

"when from the evidence submitted it is determined that a person has suffered an impairment of mind or body of a degree which would render the average man incapable of following continuously a substantially gainful occupation, and it furthermore appears reasonably certain that such degree of disability will continue throughout the life of the disabled person" * * *

will govern above any other consideration in determining permanent total disability; and where there is acceptable evidence to show that the claimant was actually permanently and totally disabled, in accordance with the definition of Regulation No. 4 just quoted, the rating officer may carry the rating as sufficiently far back of the date of report of physical findings indicating permanent total disability, as is clearly justified by the other evidence submitted.

Section 7036. Temporary Total. Tuberculosis will be considered as temporary total disability under the following conditions:

I. In Hospitals.

(a) Whn active tuberculosis, pulmonary or otherwise, has been established as existent after a proper period of hospitalization for observation and diagnosis by approved methods, a rating temporary total will be given, beginning as of the date it is shown by the evidence of fact in the file that the claimant was industrially totally disabled by active tuberculosis.

[fol. 71] II. At Home.

(a) Beneficiaries with active tuberculosis who have been hospitalized for a continuous period of one year, under proper medical supervision; whose condition, it is adjudged will not reach arrest by further hospitalization; whose discharge from hospital will not be prejudicial to themselves or their families; who are not considered feasible for vocational training; and, who upon their request are to be discharged from hospital, will be examined by a board of three physicians, in accordance with the provisions of Regulation No. 47. If it is the opinion of the said board that permanent total disability is existent, the case will be referred to the Central Office with recommendation for permanent total rating. If the recommendation is approved by Central Office, such rating will be applied. If not approved, the claimant will be continued on a temporary total rating for a period of three years following discharge from hospital, unless he requests re-examination to determine whether he is permanently totally disabled, in which event such re-examination will be made as soon as possible after such request, and due consideration given to the propriety of a permanent total rating.

(b) Where permanent total disability is not found and so rated after re-examination requested by the claimant at any time during the three year period following his discharge from hospital, the temporary total rating will be continued. Six weeks before the expiration of the three year period following discharge from hospital, the claimant will be re-examined, in accordance with Regulation No. 47, and the rating subsequent to the ending of the three year period will be based upon the physical findings reported at this examination.

(c) Beneficiaries whose discharge from hospital is not disapproved by the hospital head will be so discharged if proper investigation by the regional or suboffice discloses

the following necessities of home environment:—a sanitary domicile where reasonable comforts and care can be provided, such as a well-ventilated room or porch, good food, fresh air, etc.; relatives or friends who can assume the obligations of continued nursing care, who know how to properly safeguard themselves from infection by proper disposition of sputum, and who can furnish, on forms supplied by the U. S. Veterans' Bureau, the information necessary for clinical and nursing follow-up supervision; feasibility of keeping infants and young children from the patient; facilities to provide for not less than 18 hours a day in bed or in "curing-chair."

[fol. 72] (d) Beneficiaries suffering from active tuberculosis who have not had one year's continuous hospitalization under proper medical supervision, but who fulfill all other conditions specified in the foregoing paragraph (a), and who, for good reasons, are permitted discharge from hospital to their homes, will be continued on temporary total rating until the condition is definitely arrested, as established by proper examination, physical and X-ray. These examinations will be made at intervals of twelve months. Following definite arrest, the rating of temporary total will be discontinued in accordance with the provisions of Section 205 of the World War Veterans' Act, final paragraph. Thereafter, the claimant will be carried on a rating of 75% temporary partial for a further period of three months following the effective date of discontinuance of the temporary total rating, so as to permit him to adjust himself to his industrial environment.

(e) Beneficiaries whose tuberculous disease, after one year's continuous hospitalization under proper medical supervision, has reached complete arrest and who, for that reason, are discharged from hospital will be rated temporary total for six months following such discharge. Reexamination in these cases will be made six weeks before the expiration of the six months' period referred to, and the subsequent rating will be based upon the findings reported at that examination.

(f) Where active pulmonary tuberculosis is actually disabling to a total degree, as shown by physical signs and X-ray findings, and the clinical picture conforms to that described under C in the "Schema for Classification of Patients on Examination," (Sp. Dist. Mgr. Letter, Med.

Div., No. 5, Nov. 8, 1922), a rating of temporary total will be given. That rating will continue until physical examination, to be made every twelve months, shows a change in the condition calling for modification of the rating.

Section 7037. Cases of tuberculosis, pulmonary and otherwise, not comprehended under the foregoing section relating to ratings of permanent total and temporary total, will be rated in accordance with the U. S. V. B. Schedule of Ratings.

STIPULATION AS TO PLAINTIFF'S EXHIBITS, "L," "M," "N"

Plaintiff's Exhibits L and M, being voluminous clinical records of Plaintiff, and Plaintiff's Exhibit N, being X-ray plate of plaintiff, cannot conveniently accompany the bill of [fol. 73] exceptions and be made a part thereof; and it is therefore stipulated and agreed by and between counsel for the respective parties that either party may produce any or all of said exhibits at the argument in the Appellate Court.

George Stephan, United States Attorney, L. A. Lawler, Richard A. Toomey, R. H. Blackman, Attorneys for Plaintiff. S. R. Owens, Attorneys for Defendant.

APPROVED OF BILL OF EXCEPTIONS BY DISTRICT JUDGE AND COUNSEL

And now for asmuch as the above and foregoing matters and things do not fully appear of record, the defendant tenders this its Bill of Exceptions by it reserved herein, and prays that the same may be allowed, signed and sealed by the Judge of this Court and filed and made a part of the record in said cause, pursuant to the statute in such case made and provided, which is accordingly done on this 21st day of December, A. D. 1927.

J. Foster Symes, District Judge. (Seal.)

Approved: S. R. Owens, Attorney for Plaintiff. George Stephan, Roy H. Blackman, Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT—Filed Dec. 21, 1927

The Clerk will issue a transcript of the record in the above-entitled cause for filing in the United States Circuit Court of Appeals, embracing the following:

Original Petition.

Summons.

[fol. 74] Amended Petition, including Stipulation attached thereto.

Defendant's Answer to Amended Petition.

Stipulation waiving jury and agreeing that issues may be tried and determined by the Court.

All Orders.

Judgment.

Defendant's Motion for New Trial.

Petition for Writ of Error and Assignment of Errors.

Order allowing Writ of Error.

Citation.

Complete transcript of proceedings, including plaintiff's Exhibits "A" to "S" inclusive.

George Stephan, United States Attorney for the District of Colorado. R. H. Blackman, Assistant United States Attorney for the District of Colorado.

IN UNITED STATES DISTRICT COURT

WRIT OF ERROR AND CLERK'S RETURN—Filed December 21, 1927

UNITED STATES OF AMERICA,
District of Colorado, ss:

The President of the United States of America to the Honorable the Judge of the District Court of the United States, for the District of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you at the May Term, 1927, thereof, between Robert G. Meadows, Plaintiff, and The United States of America, Defendant, a manifest error hath happened, to

the great damage of the said The United States of America, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States [fol. 75] Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 18th day of February, 1928, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, this 21st day of December, in the year of our Lord, one thousand nine hundred and twenty-seven, and of the Independence of the United States, the 152nd year. Issued, at office in the City and County of Denver, in said District, with the seal of the District Court of the United States for the District of Colorado, and dated as aforesaid.

Charles W. Bishop, Clerk United States District Court, District of Colorado. (Seal U. S. Dist. Court Dist. of Colorado.)

Allowed by J. Foster Symes, Judge.

Return

The United States of America,
District of Colorado, ss:

In obedience to the command of the within writ, I herewith transmit to the United States Circuit Court of Appeals a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof I hereunto subscribe my name, and affix the seal of the District Court of the United States for the District of Colorado, at the City and County of Denver, in said District, this fourteenth day of January A. D. 1928.

Charles W. Bishop, Clerk. (Seal U. S. Dist. Court Dist. of Colorado.)

[fol. 76] Citation, in usual form, showing service on S. R. Owens, filed December 21, 1927, omitted in printing.

[fol. 77] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 78] Appearances of counsel omitted in printing.

[fol. 79] Minute entry of submission of motion to strike bill of exceptions omitted in printing.

[fol. 80] In United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1928

No. 8082

United States of America, Plaintiff in Error,

vs.

Robert G. Meadows, Defendant in Error

In Error to the District Court of the United States for the District of Colorado

On Motion of the Defendant in Error to Strike Bill of Exceptions from the Record

Mr. George Stephan, United States Attorney; Mr. Forrest C. Northcutt, Assistant United States Attorney; Mr.

L. A. Lawlor, Attorney, U. S. Veterans' Bureau; Mr. Richard A. Toomey, Regional Attorney, U. S. Veterans' Bureau, and Mr. James T. Brady, Attorney, U. S. Veterans' Bureau, filed brief for plaintiff in error.

Mr. S. R. Owens filed brief for defendant in error.

Before Booth and Cotteral, Circuit Judges, and Reeves, District Judge

OPINION ON MOTION TO STRIKE BILL OF EXCEPTIONS—Filed Dec. 3, 1928

COTTERAL, Circuit Judge, delivered the opinion of the court.

The defendant in error has filed a motion to strike the bill of exceptions from the record in this case, on the grounds that it was not settled in time and is not in proper form.

[fol. 81] The transcript returned with the writ of error shows that the trial of the cause occurred on July 28, 1927, at the May term in that year, judgment was rendered and a motion for a new trial was denied on September 27, 1927, during that term, the term was adjourned sine die on October 31, 1927, and the bill of exceptions was presented to the District Judge and settled on December 21, 1927, without any order being made extending the time therefor and after the time allowed by Rule IX of the District Court, which provides:

"Exceptions taken to rulings of the court shall be put in form and delivered to adversary counsel within sixty days next after they are alleged. When taken in the course of a trial the sixty days shall begin from and after the last day of the trial. Adversary counsel shall be at liberty to note objections to form or substance of such exceptions within ten days next after receiving the same and to ask the attention of the court thereto within the same time. If needful the court will appoint a time for hearing the exceptions."

We find no difficulty in concluding that the purported settlement of the bill of exceptions was unauthorized and

ineffectual to incorporate the trial proceedings in the record of this case. After a trial term expires, such exceptions may not be settled, unless the time for presenting them has been extended by order or rule of court. Exporters v. Butterworth Judson Co., 258 U. S. 365; Farmers Union Grain Co. v. Hallet & Carey Co., 21 Fed. (2d) 42; Great Northern Life Ins. Co. v. Dixon, 22 Fed. (2d) 655; Cudahy Packing Co. v. City of Omaha, 24 Fed. (2d) 3; Coleman v. U. S., 26 Fed. (2d) 870.

As no extension of time was granted to the plaintiff in error beyond the trial term by an order or rule of the court, we find it necessary to sustain the motion to strike the bill of exceptions from the record. It is so ordered. The further ground of the motion requires no consideration.

[fol. 82] In United States Circuit Court of Appeals

Order Sustaining Motion to Strike Bill of Exceptions, etc.—December 3, 1928

This cause came on to be heard on the motion of defendant in error to strike the bill of exceptions from the record, and in accordance with the opinion this day filed, It is now here ordered by this Court that said motion, be, and the same is hereby, sustained, and the bill of exceptions is hereby stricken from the transcript of the record from the said District Court.

And it is further ordered by this Court that this cause, be, and the same is hereby, assigned for hearing of any questions which do not require a consideration of the bill of exceptions at the foot of the calendar for Wednesday, January 9, 1929.

December 3, 1928.

Minute entry of argument and submission January 9, 1929, omitted in printing.

[fol. 83] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Before Stone, Lewis, and Cotteral, Circuit Judges

OPINION—Filed Mar. 19, 1929

STONE, Circuit Judge, delivered the opinion of the court.

This is an action (filed June 18, 1926) by Robert G. Meadows against the United States to reinstate a lapsed Veterans' insurance policy. From a judgment, after trial, requiring such reinstatement, the United States brings this writ of error.

A motion to strike the bill of exceptions herein has been sustained (United States v. Meadows, opinion filed December 3, 1928), so that the matter comes before us only on the record proper. The main question urged upon this writ of error is the lack of jurisdiction in the trial court to entertain this suit.

[fol. 84] The amended petition alleges a policy for $10,000 of War Risk insurance issued defendant in error; that about February 1, 1920, $3,000 of this policy was converted to a twenty payment life policy and the remaining $7,000 allowed to lapse; that about February 21, 1923, the plaintiff made a written application for the reinstatement and conversion of the remaining $7,000 of the original policy and tendered the necessary premiums and interest; that in making such application, he "complied with any and all the terms of the War Risk Insurance Act and the amendments thereto, and any and all U. S. Veterans' Bureau rules and regulations pertaining to such application. That at the time said application was made, the plaintiff was suffering from a disability, to-wit, tuberculosis (pulmonary) of a degree less than permanent and total disability;" that the defendant "erroneously and contrary to the terms of the War Risk Insurance Act and amendments thereto rejected and refused the plaintiff's application;" and that plaintiff was and is entitled to the reinstatement and conversion sought and again offers and stands willing, ready and able to pay the necessary premiums therefor. An answer to the amended petition was filed which, among other defenses,

alleged that, at the time the application for reinstatement was submitted and since November 28, 1922, the plaintiff was permanently and totally disabled. These pleadings make it clear that the real issue tendered at the trial and concerning which evidence was introduced, was as to the existence or non-existence of permanent disability at the time the application for reinstatement was submitted. Obviously, this was a question purely of fact.

Whether the trial court had jurisdiction of this character of controversy depends upon the proper construction of two sections of the law relating to War Risk insurance. The first of these is Section 2 of the Act of August 9, 1921 (42 Statutes, 148), which provides that the Director of the Veterans' Bureau "subject to the general direction of the President, shall administer, execute and enforce the provisions of this Act, and for that purpose * * * shall decide all questions arising under this Act except as otherwise provided herein."

The second provision is in Section 19 of the Worlds War Veterans' Act (Act of March 4, 1925, 43 Statutes, 1302), which provides:

[fol. 85] "In the event of disagreement as to claim under a contract of insurance between the Bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies."

It has been repeatedly determined that the grant of power given to the Director by Section 2 of the Act of 1921, to decide questions of fact, cannot be challenged, unless the controversy falls within Section 19 of the Act of 1924, or unless such decision is "wholly without evidential support or wholly dependent upon a question of law or clearly arbitrary or capricious" (United States v. Williams, decided January 2, 1929; Silberschein v. United States, 266 U. S. 221, 225; Armstrong v. United States, 16 Fed. (2d) 387, 389, this court; United States v. Edwards, 23 Fed. (2d) 477, 479, this court). There is no allegation in this petition that the

action of the Director upon this matter was wholly unsupported by evidence or wholly dependent upon a question of law or clearly arbitrary and capricious. The only allegation is that the Director acted "erroneously and contrary to the terms of the War Risk Insurance Act and amendments thereto." In Silberschein v. United States, 266 U. S. 221, 225, the Supreme Court stated that (p. 225):

"The general allegations of the petition that the Director's decision was arbitrary, unjust and unlawful, and a usurpation of power, are merely legal conclusions. Clearly, the petition does not present a case where the facts are undisputed and the only conclusion properly to be drawn is one favorable to petition, or where the law was misconstrued, or where the action of the executive officer was arbitrary or capricious."

Obviously, the allegations in the present petition fall far short of charging any such action upon the part of the Director as would give this court jurisdiction. Therefore, the court was without jurisdiction unless such is given by Section 19 of the Act of 1924.

Section 19 is expressly limited and confined, by its terms, to a matter "of disagreement as to *claim under contract of insurance* between the Bureau and any person or persons claiming thereunder." Here, the claim is not under a con- [fol. 86] tract of insurance but the claim is to have insurance reinstated, which plaintiff himself alleges has lapsed. While such a reinstated contract of insurance is connected with and, in a sense, based upon the earlier contract of insurance, yet, that earlier contract has ceased to have existence and validity and the contract, if reinstated, becomes a new contract. Judge Van Valkenburgh, speaking for this court, in Stevens v. United States (opinion filed December 14, 1928), stated, in speaking of a similar reinstated contract, that "the reinstatement made brought into existence a new contract between the parties." Therefore, a claim to a right to reinstate such a contract of insurance which has lapsed is not a "claim under contract of insurance between the Bureau and any person or persons claiming thereunder," within the meaning of Section 19.

As the subject matter of this action does not fall within Section 19 of the Act of 1924, and as the petition herein does not allege facts nor even generally charge that the action of the Director in rejecting the application for reinstatement was wholly without evidence, wholly dependent upon a question of law or clearly arbitrary or capricious, we think the trial court was without jurisdiction and the judgment should be reversed with instructions to dismiss the petition for lack of jurisdiction.

[fol. 87] In United States Circuit Court of Appeals, Eighth Circuit

No. 8082

United States of America, Plaintiff in Error,

vs.

Robert G. Meadows

In Error to the District Court of the United States for the District of Colorado

Judgment—Mar. 21, 1929

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Colorado, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed without costs to either party in this Court.

And it is further ordered by this Court that this cause, be, and the same is hereby, remanded to the said District Court with instructions to dismiss the petition for lack of jurisdiction.

[fol. 88] In United States Circuit Court of Appeals

[Title omitted]

Petition for Rehearing—Filed April 22, 1929

The appellee above named respectfully petitions the Court to recall and set aside the opinion heretofore filed herein,

and the order, if any, entered thereon, and to grant a rehearing of this cause. For the grounds of such petition, he respectfully urges that this Honorable Court has inadvertently committed error to his manifest prejudice in the following respects, viz.:

[fol. 89] 1. In holding that the court below was without jurisdiction to hear and determine this cause.

2. In holding that the judgment of the court below should be reversed with instructions to dismiss the petition for lack of jurisdiction.

3. In holding that the subject matter of this action does not fall within Section 19 of the World's War Veterans' Act (Act of March 4, 1925, 43 Statutes, 1302).

4. In holding that the petition should be dismissed for failure to charge an action on the part of the director of the Veteran's Bureau as would give the court jurisdiction.

Wherefore your petitioner prays that a rehearing of this cause be granted to the end that said errors may be corrected and the judgment of the court below affirmed.

Respectfully submitted.

S. R. Owens, Lowell D. Hunt, Jean S. Breitenstein, Attorneys for Appellee.

[fol. 90] CERTIFICATE OF COUNSEL

The undersigned, one of the attorneys for the appellee, petitioner herein, certifies that in his opinion the above petition is well founded and is not filed for the purpose of delay.

S. R. Owens, Attorney for Appellee.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING—May 28, 1929

This cause came on this day to be heard upon the petition for a rehearing, filed by Counsel for Defendant in Error.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause, be, and the same is hereby, denied.

[fol. 91] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 92] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 6, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,400. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 269. Robert G. Meadows, petitioner, vs. The United States of America. Petition for writ of certiorari and exhibit thereto. Filed July 29, 1929. File No. 34,400.

FILE COPY

JUL 29 1929
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 269

ROBERT G. MEADOWS, PETITIONER,

vs.

THE UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

JEAN S. BREITENSTEIN,
Counsel for Petitioner.

S. R. OWENS,
LOWELL D. HUNT,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 269

ROBERT G. MEADOWS, PETITIONER,

vs.

THE UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner above named respectfully represents:

Statement of Facts.

This is an action brought by Robert G. Meadows, petitioner herein, against the United States to reinstate a lapsed War Risk Insurance policy.

The petition was filed in the United States District Court for the District of Colorado on June 18, 1926.

An amended petition was filed August 21, 1926. It is there alleged that the petitioner served in the United States Army from March 31, 1914, to August 2, 1923, when he was discharged under a surgeon's certificate of disability. During his enlistment a policy for ten thousand ($10,000) dollars of War Risk Insurance was issued to him. About February 1, 1920, he converted three thousand ($3,000) dollars of this policy into a twenty-payment life policy and allowed the remaining seven thousand ($7,000) dollars to lapse. About February 21, 1923, he made a written application for the reinstatement of the seven thousand ($7,000) dollars of the original policy, which had lapsed, and tendered the necessary premiums and interest. The amended petition alleges that in making such application he complied with all the terms of the War Risk Insurance Act and all the rules and regulations of the United States Veterans' Bureau; that at the time of making such application he was suffering from a disability, pulmonary tuberculosis, of a degree less than permanent and total disability; that the Veterans' Bureau erroneously and contrary to the terms of the War Risk Insurance Act rejected and refused his application; that he is entitled to the reinstatement applied for, and is ready and willing to pay all the premiums necessary therefor.

To the amended petition the respondent filed, on January 4, 1927, an answer which denied that the petitioner had complied with all the rules and regulations of the Veterans' Bureau in making his application for reinstatement, and denied that the petitioner was suffering from a disability, pulmonary tuberculosis, of a

degree less than permanent total. The answer affirmatively alleged that the petitioner at the time of the application and at all times since November 28, 1922, was permanently and totally disabled.

Upon trial to the United States District Court for the District of Colorado testimony was presented and the issues joined found in favor of the petitioner and judgment entered for him.

The respondent then took the case to the Circuit Court of Appeals for the Eighth Circuit. Upon motion of the petitioner the bill of exceptions was stricken from the record. The Circuit Court on March 19, 1929, reversed the District Court, holding that that court had no jurisdiction over a controversy of this character. Thereafter a petition for rehearing was filed and overruled on May 28, 1929.

The Circuit Court of Appeals held that the trial court was without jurisdiction of the cause because (1) there was no allegation in the petition that the action of the Director of the Veterans' Bureau in denying the petitioner's application was arbitrary or capricious, and, hence, the action did not come under Section 2 of the Act of 1921, and (2) because the controversy did not involve a claim under a contract of insurance, and, hence, could not be brought within the provision of Section 19 of the Act of 1924.

This petition is accompanied by a certified transcript of the record in the case, including the proceedings of the United States Circuit Court of Appeals for the Eighth Circuit, to which the writ is asked to be directed.

Reasons Relied Upon for Allowance of Writ of Certiorari.

The reasons relied upon for the allowance of this writ are as follows:

(*a*) The decision of the Circuit Court that the trial court was without jurisdiction over the cause for the reason that the petition did not allege that the action of the Director of the Veterans' Bureau in denying petitioner's application was arbitrary or capricious is erroneous because the trial court had general jurisdiction of the parties, and as the respondent did not attack in the trial court the jurisdiction of the court upon this ground, the point was waived and cannot be relied upon in the appellate courts. Such decision presents an important question of Federal law which has not been, but should be, settled by this Court, and is also in conflict with applicable decisions of the Circuit Court of Appeals for the Eighth Circuit.

(*b*) The decision of the Circuit Court of Appeals that the claim of a holder of a War Risk Insurance policy of a right to reinstate a portion of that policy which has lapsed is not a claim under a contract of insurance within the meaning of Section 19 of the War Risk Insurance Act, and, hence, not reviewable by the courts, is an important question of Federal law which has not been, but should be, settled by this Court, and is in conflict with applicable decisions of this Court.

WHEREFORE, because of the importance of the questions involved, and for the reasons hereinabove set forth, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding said court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record of the proceedings of that court in this case, which was there entitled "United States of America, plaintiff in error, *v.* Robert G. Meadows, defendant in error, Number 8082," to the end that said cause may be reviewed and determined by this Court as provided in Section 240 of the Judicial Code as amended by the Act of February 13, 1925, and the rules of this Court, and that your petitioner may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with the provisions of said Code and the rules of this Court, and that the judgment of the said Circuit Court of Appeals may be reversed by this Court.

ROBERT G. MEADOWS,
Petitioner,
By JEAN S. BREITENSTEIN,
Counsel for Petitioner.

S. R. OWENS,
LOWELL D. HUNT,
Of Counsel.

SUPPORTING BRIEF.

Introduction.

The decision of the United States Circuit Court of Appeals for the Eighth Circuit which the petitioner seeks to have reviewed here by writ of certiorari is reported as "United States of America *v.* Robert G. Meadows," Number 8082, Advance Sheets, Federal Reporter, Second Series, Vol. 32 (2d), No. 2, page 440.

The judgment of the Circuit Court of Appeals in this case was rendered March 19, 1929, but thereafter a petition for rehearing was duly filed. The petition for rehearing was denied May 28, 1929.

The rulings made by the Circuit Court of Appeals which the petitioner seeks to have reversed and upon which he relies as the basis for this Court's jurisdiction are:

1. The court was without jurisdiction to try and determine this cause, because the petition did not allege that the action of the Director of the Veterans' Bureau in denying petitioner's application was arbitrary or capricious, and, hence, the action does not come within Section 2 of the War Risk Insurance Act of 1921 (42 Stat. 148), and

2. The court was without jurisdiction because the controversy did not involve a claim under a contract of insurance, and, hence, could not be brought within the provisions of Section 19 of the Act of 1924 (43 Stat. 1302).

The jurisdiction of the Supreme Court of the United States is invoked in this case under provisions of Section 240 of the Judicial Code as amended by the Act of February 13, 1925. Under that section of the Judicial Code this Court may review all decisions of the circuit courts deciding important questions of Federal law which have not been, but should be, settled by this Court, and also it may review decisions of circuit courts on Federal questions probably in conflict with applicable decisions of this Court.

Statement of the Case.

This is an action for the reinstatement of a lapsed War Risk Insurance policy. The amended petition filed August 21, 1926, alleges that the petitioner served in the United States Army from March 31, 1914, to August 2, 1923, when he was discharged under a physician's certificate of disability. During his enlistment a War Risk Insurance policy in the amount of ten thousand ($10,000) dollars was issued to him. About February 1, 1920, he allowed seven thousand ($7,000) dollars of this to lapse and converted three thousand ($3,000) dollars into a twenty-payment life policy. About February 21, 1923, he made written application for the reinstatement of the seven thousand ($7,000) dollars of the original policy, which had lapsed, and tendered to the Veterans' Bureau the necessary premiums and interest. It is alleged that in making such application the petitioner complied with all the terms

of the War Risk Insurance Act and all the rules and regulations of the United States Veterans' Bureau. That at the time of making such application he was suffering from a disability, pulmonary tuberculosis, of a degree less than permanent and total disability; that the Veterans' Bureau erroneously and contrary to the terms of the War Risk Insurance Act rejected and refused his application; that he is entitled to the reinstatement applied for, and is ready and willing to pay all the premiums necessary therefor.

To the amended petition the respondent filed on January 4, 1927, an answer which denied that the petitioner had complied with all the rules and regulations of the Veterans' Bureau in making his application for reinstatement, and denied that the petitioner was suffering from a disability of a degree less than permanent total. The answer affirmatively alleges that the petitioner at the time of making the application for reinstatement, and at all times since November 28, 1922, was permanently and totally disabled.

The pleadings then presented but one real issue which was whether or not the petitioner was permanently and totally disabled at the time he applied for reinstatement of his lapsed War Risk insurance.

Upon trial to the United States District Court for the District of Colorado testimony was presented and the issues joined found in favor of the petitioner, and judgment was entered for him.

The respondent then took the case by writ of error to the Circuit Court of Appeals for the Eighth Circuit. Upon motion of the petitioner the bill of exceptions

was stricken from the record because it was not filed in time (United States *v.* Meadows, 29 Fed. (2d) 739).

Particular attention is directed to the fact that the record as it now stands shows no objections interposed in the trial court to the jurisdiction of the court to hear and determine the cause. The question was raised merely by the motion for a new trial and assignments of error.

The Circuit Court of Appeals held that the trial court was without jurisdiction over the cause for the reasons that (1) there was no allegation in the petition that the action of the Director of the Veterans' Bureau in denying petitioner's application was arbitrary or capricious, and, hence, the action could not be brought within the terms of Section 2 of the Act of 1921, and (2) the controversy does not involve a claim under a contract of insurance, and, hence, does not fall within the provisions of Section 19 of the Act of 1924. The judgment of the District Court was, of course, reversed. The petition for rehearing was filed, and overruled on May 28, 1929. It is to reverse the judgment of the Circuit Court of Appeals that the petitioner now seeks to have the cause reviewed by this Court upon certiorari.

Points Relied Upon.

As stated in the petition for a writ of certiorari, the reasons upon which the petitioner relies for reversing the judgment are:

(*a*) The decision of the Circuit Court that the trial court was without jurisdiction over the cause for the

reason that the petition did not allege that the action of the Director of the Veterans' Bureau in denying petitioner's application was artribary or capricious is erroneous because the trial court had general jurisdiction of the parties, and as the respondent did not attack in the trial court the jurisdiction of the court upon this ground, the point was waived and cannot be relied upon in the appellate courts. Such decision presents an important question of federal law which has not been, but should be, settled by this Court, and is also in conflict with applicable decisions of this Court, and with other decisions of the Circuit Court of Appeals for the Eighth Circuit.

(*b*) The decision of the Circuit Court of Appeals that the claim of a holder of a War Risk insurance policy of a right to reinstate a portion of that policy which has lapsed is not a claim under a contract of insurance within the meaning of Section 19 of the War Risk Insurance Act, and, hence, not reviewable by the courts, is an important question of federal law which has not been, but should be, settled by this Court, and is in conflict with applicable decisions of this Court.

The argument of the petitioner may be summarized as follows:

1. The respondent has waived the right to question the jurisdiction of the court upon the ground that the petition is defective for failure to allege that the action of the Director of the Veterans' Bureau was arbitrary or capricious.

(*a*) The court had general jurisdiction of the parties;

(*b*) The question was not presented in the trial court.

2. The disagreement between the parties presented by this action is justiciable under the terms of Section 19 of the War Risk Insurance Act, as it presents a claim under a contract of insurance.

(*a*) The right of reinstatement depends upon the provisions of the original contract;

(*b*) The reinstatement under the terms of the original policy continues the old policy and does not create a new one;

(*c*) Decisions of this Court, the lower federal courts, and of the state courts uniformly hold that a claim such as this arises out of the original contract.

Brief of the Argument.

I.

The petitioner first contends that the Circuit Court erred in holding that the trial court was without jurisdiction because the petition did not allege that the action of the Director of the Veterans' Bureau was arbitrary or capricious.

In this connection we first direct attention to the statute providing for the reinstatement of a lapsed portion of a War Risk insurance policy. Section 408 of the Act (42 Stat. 156) reads thus:

"In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with an application for reinstatement, in whole or in part, of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) hereafter made may be approved if made within one year after the passage of this mandatory Act or cancellation, *provided*, that the applicant's disability is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War; *provided further*, that the applicant during his lifetime submits proof satisfactory to the director showing that he is not totally and permanently disabled * * *, the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per annum, compounded annually, * * *."

Section 2 of the Act (42 Stat. 148) is a general grant of power to the Director of the Veterans' Bureau to administer the Act. It provides that:

"The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this Act, and for that purpose shall have full power and authority to make rules and regulations, not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out its purpose, and shall decide all questions arising under this Act and all decisions of questions of fact affect-

ing any claimant to the benefits of Titles II, III, or IV of this Act, shall be conclusive except as otherwise provided herein."

We particularly emphasize the point that the respondent by its pleading did not question the jurisdiction of the trial court, and joined issue solely on the proposition of whether or not the petitioner was permanently and totally disabled at the time of his application for reinstatement. This question was tried out, and after a decision adverse to the respondent was rendered, it then in its motion for a new trial and assignments of error advanced the contention that the court was without jurisdiction but did not specifically state, or even hint, that the jurisdictional defect was the failure of the petition to allege that the action of the Director was arbitrary or capricious.

It is true that the petition did not state in so many words that the Director acted arbitrarily or capriciously. It did allege that the petitioner had complied with all the rules and regulations of the Veterans' Bureau, had tendered the necessary premiums, and was not suffering from a permanent and total disability. This is sufficient to bring the application within the terms of Section 408, quoted *supra*, and when the Director denied the application under such circumstances his action was arbitrary. Mere allegations of arbitrariness and capriciousness are legal conclusions and of no effect. (See Silbershein *v.* U. S., 266 U. S. 221, 225.)

Further, if we concede for the sake of argument that the petition is defective in this regard, still the

decision of the Circuit Court should not stand for the respondent by entering upon the trial without raising the issue has waived the point.

It will be conceded, we believe, that the court had general jurisdiction of the cause and subject-matter. Hence this defect, if there is a defect, has been waived by failure to make timely objection under the rule thus announced by the Circuit Court for the Eighth Circuit in U. S. *v.* Edwards, 23 Fed. (2d) 477, 479 *et seq.*, from which we quote:

> "It is conceded that the District Court had general jurisdiction of the parties and of the subject-matter. The jurisdictional question raised is not one which goes to the court as a federal court, but concerns what is termed a condition precedent to the relief sought. In 15 *Corpus Juris,* 845 Par. 164, the rule is thus stated:
>
> " 'An absolute want of jurisdiction of the subject-matter or cause of action cannot be waived, nor can the doctrine of equitable estoppel be invoked to confer a jurisdiction on a tribunal which has not jurisdiction of the subject-matter. But where the court has general jurisdiction of the subject-matter a lack of jurisdiction of the particular case may be waived by failure to take timely and specific objections, or an invocation of or submission to the jurisdiction may raise an estoppel to deny such jurisdiction. So, also, the parties may, either expressly or by their conduct, waive objections to remedies pursued in courts having jurisdiction of the subject-matter.'

"In Beyer *v.* Le Fevre, 186 U. S. 114-118, 22 S. Ct. 765, 767 (46 L. Ed. 1080), Mr. Justice Brewer said:

" 'Whatever might have been the conclusion if the defendants had stood upon their challenge of the jurisdiction, the agreement of the parties to submit certain questions to a jury, the trial before the jury and the stipulation for returning the testimony there taken to the equity court for consideration by the judge thereof, must be held a waiver of the objection to the jurisdiction.' "

The decision from which the above quotation has been taken considered an action to recover under a War Risk insurance policy. The Government contended that the court was without jurisdiction because the claimant had not secured a rating from the Veterans' Bureau, which, by the terms of Section 306, was a condition precedent to recovery in the courts. It was held that as no timely objection to the court's jurisdiction had been made on such ground the jurisdictional point had been waived and recovery was allowed.

We submit that that decision is authority for our position here. Here as there the court had general jurisdiction of the parties and subject-matter, and timely and specific objections were not made to the jurisdiction of the court. Hence, the point was waived, the court had jurisdiction and recovery should be allowed.

Concluding this section of the argument we urge that:

1. The petition is not defective for failure to allege arbitrary or capricious action;

2. If the petition is defective the point was waived by failure to make a timely and specific objection;

3. The decision of the Circuit Court that the petition is defective for failure to allege arbitrariness and capriciousness is in conflict with the general rules announced by the same Circuit Court in U. S. *v.* Edwards, 23 Fed. (2d) 477, 479, quoted *supra,* and by this Court in Beyer *v.* Le Fevre, 186 U. S. 114-118, quoted *supra.*

II.

The second contention of the petitioner is that this controversy involves a claim arising under a contract of insurance, and, hence, falls within the purview of Section 19 of the War Risk Insurance Act.

Said Section 19 (43 Stat. 1302) reads thus:

> "In the event of disagreement as to claim a contract of insurance between the Bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies."

In this connection we direct the attention of the Court to that part of Section 2 which grants to the

Director general power to administer under the Act, but which gives him the right to decide all questions arising under this Act "except as otherwise provided herein". We submit that there can be no question but that the quoted phrase means that the decision of the Director shall not be binding on cases which are justiciable under Section 19.

The Circuit Court held that this case does not fall within the provisions of Section 19 for the reason that it was not a claim arising under a contract of insurance, but rather was the creation of a new contract. We must respectfully disagree with the announced opinion of the Circuit Court. Our position is that a reinstatement in this case is merely the exercise of rights given by the old contract, and can neither logically nor legally be treated as the creation of a new contract.

Reinstatement can be effected only pursuant to the terms of the original contract of insurance. Its very existence depends on the provisions of the original contract. There is no new agreement. A new contract is not created. To the contrary a right is exercised which is given by, and enforceable under, the original insurance contract. Surely the claim to such a right is a claim under a contract of insurance, for without the contract it is impossible for there to be any right to reinstatement.

It is well established that the War Risk Insurance Act, amendments thereto and all Veterans' Bureau's rules and regulations become a part of the original contracts of insurance issued by the Veterans' Bureau.

As said by Mr. Justice Holmes in White *v.* United States, 270 U. S. 175, 180:

> "The certificate of insurance provided in terms that it should be 'subject in all respects to the provisions of such Act (of 1917), of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the act, shall constitute the contract'. These words must be taken to embrace changes in the law no less than changes in the regulations."

See also Helmholtz *v.* Horst, 294 Fed. 417.

We know of no federal decision bearing directly on the question presented here. It is true that Judge Van Valkenburgh in Stevens *v.* U. S., 29 Fed. (2d) 904 (opinion filed Dec. 14, 1928), stated that reinstatement brought into existence a new contract. This statement is pure *dicta* in that case, the decision in which was based upon a question of estoppel, and does not imply that a claim of a right to reinstate is not a claim under the old contract of insurance.

There being, then, no applicable decisions involving War Risk insurance we desire to call the attention of the Court to decisions bearing upon the question of the reinstatement of commercial insurance, feeling that we are justified in doing so under the principle thus stated in Jensen *v.* U. S., 29 Fed. (2d) 951, 952 (Adv. Sheets, Feb. 21, 1929):

> "It is suggested that since war risk insurance differs from commercial life insurance in that

> it is insurance against both death and total disability and may be reinstated at a time when the insured is suffering from service connected temporary total disability, the rule applicable to commercial insurance is not controlling, in the constructions of Section 307 of the World War Veterans' Act. But war risk insurance is not a gratuity but a contract between the insured and the Government, and the rights of the parties are to be ascertained from the terms of their contract."

See also Standard Oil Co. *v.* U. S., 267 U. S. 76, 79.

In the case of Ætna Life Insurance Company *v.* Dunken, 266 U. S. 389, there was considered the question as to whether a term life insurance policy issued in Tennessee to a citizen of that state, but thereafter converted in Texas after the insured had moved to Texas, should be construed under the laws of Tennessee, Texas or Connecticut, the domicile of the insurance company. The question hinged on whether or not the converted policy was an independent agreement, or whether or not it was the mere exercising of a right under the original contract. Mr. Justice Sutherland, speaking for the court, said:

> "Whether a subsequent contract made in pursuance of the provisions of an earlier one is to be regarded as separate, detached, and independent, or as a continuation and in effect the same, is a matter not always free from difficulty."

The court then discusses at length the decisions of various state courts and concludes thus:

> "The second policy here was issued in pursuance of, and was dependent for its existence and its terms upon, the express provisions of the contract contained in the first one. By those provisions, upon the simple application of the insured, the new policy must issue. Nothing was left to future agreement. The terms of the new policy were fixed when the original policy was made. In effect, it is as though the first policy had provided that, upon demand of the insured and payment of the stipulated increase in premiums, that policy should, automatically, become a twenty-payment life commercial policy. It was issued not as the result of any new negotiation or agreement, but in discharge of pre-existing obligations. It merely fulfilled promises then outstanding, and did not arise from new or additional promises. The result, in legal contemplation, was not a novation, but the consummation of an alternative specifically accorded by, and enforceable in virtue of, the original contract."

It is our contention that the situation presented in the case at bar is analogous, because in our case, as in the Dunken case, reinstatement was made in pursuance of, and was dependent for its existence and its terms upon, the express provisions of the original contract.

Attention is further directed to the case of Knights Templars', etc., *v.* Jacobus, 80 Fed. 202, where it was held that the reinstatement of a lapsed policy was in

fact the revival of the original policy and not the creation of a new contract of insurance.

In the case of Equitable Life Assurance Co. *v.* McElroy, 83 Fed. 631, it was held that reinstatement as brought about in the situation there before the court was the creation of a new contract. We wish to point out, however, that in that case the reinstatement was not done under the terms, nor was it dependent for existence upon the express provisions, of the original contract, but to the contrary the reinstatement was a new and independent contract.

In case of Wastun *v.* Lincoln Nat. Life Ins Co., 12 Fed. (2d) 422, the court considered an action on a life insurance policy which had been reinstated after it had lapsed for failure to pay premiums. The court held on the authority of the McElroy case that the reinstatement was a new contract. Here also a new agreement was entered into between the parties at the time of the attempted reinstatement of the policy.

On the other hand, it has been held that the reinstatement of a lapsed policy does not create a new contract of insurance, but simply restores the old contract. In Business Men's Assur. Co. of America *v.* Scott, 17 Fed. (2d) 4, 6, it was said that:

> "The defendant contends that the reinstatement was not a restoration of the old policy in full force and effect, but was a new contract, and that, that contract not having been in force for a full year, the insurer was not precluded from setting up the defense of suicide. We cannot agree with this contention. The payment of the premium after the due date did not create

a new contract of insurance and had the effect simply of restoring the old contract."

Turning to the text writers and state courts we find that the rule for which we contend is uniformly adopted and upheld.

It is said in 3 Cooley, Briefs on Law of Insurance, 2406, that:

> "The effect of a reinstatement is not, generally, the making of a new contract but it merely cancels the forfeiture, leaving the original contract in force."

37 *C. J.* 502 states that:

> "Under the general rule it is generally held that a reinstatement of the policy after default in the payment of premiums by performance of conditions specified in the policy continues in force the original policy, and does not create a new one."

14 R. C. L. 990 states the rule thus:

> "Where a revival of a forfeited life policy is assented to, the original contract is reinstated with all its terms and the new terms expressed in the application for revival."

This rule so announced by the text-book writers is supported by the following decisions:

New York Mutual Life Ins. Co. *v.* Lovejoy, 203 Ala. 542; 83 So. 591.

Monohan *v.* Fidelity Mutual Life Ins. Co., 242 Ill. 488; 90 N. E. 213.

Goodwin *v.* Provident Sav. Life Assurance Assn., 97 Ia. 226; 66 N. W. 157.

State Mutual Life Ins. Co. *v.* Rosenberry, 213 S. W. 242 (Texas).

Muckler *v.* Life Association, 208 N. W. 787 (S. D.).

Winder Nat. Bank *v.* Ætna Life Ins. Co., 36 Ga. Ap. 703; 137 S. E. 848.

New York Life Ins. Co. *v.* Adams, 151 Ark. 123; 235 S. W. 412.

Davidson *v.* Old Peoples' Mutual Benefit Society, 39 Minn. 303; 39 N. W. 803.

Lovick *v.* Providence Life Ann., 110 N. C. 93; 14 S. E. 506.

Metropolitan Life Ins. Co. *v.* McTague, 49 N. J. L. 587; 9 Atl. 766.

It is our earnest contention that under the rule so well established by the judicial authorities cited above, this action is one brought under the original contract of insurance, and, hence, comes within the purview of Section 19. As we have repeatedly pointed out herein, the test laid down by the Supreme Court of the United States in the Dunken case is a determination of whether or not a second policy was issued in pursuance of, and dependent for its existence and its terms upon, the expressed provisions of the first contract. Such is undeniably the case here. The complaint alleges that Meadows had a contract of War Risk insurance; that a portion of it lapsed; that pursuant to the statutory provisions, which we have pointed out

was a part of the insurance contract, Meadows sought to reinstate. The terms of the new policy were fixed when the original policy was made. Nothing was left for any future agreement. The answer does not set forth that any new policy would have been issued to Meadows, nor that the contract of insurance would have been in any way changed by the reinstatement. If a new contract was to have been made, or a new agreement entered into, we feel that such facts should have been set up in the answer. Without such facts there is nothing to show that there would have been any new policy, contract or agreement; hence, this dispute in the final analysis is a disagreement between the two parties under the rights given under the old original contract, and is clearly within the purview of Section 19.

We submit then that a controversy such as this is justiciable under Section 19, as it is a claim under a contract of insurance, and that the decision of the Circuit Court holding otherwise should be reviewed by certiorari because the point is an important one affecting many holders of War Risk insurance policies, and because the decision of the Circuit Court is in conflict with the principles announced in the decision of this Court in Ætna Life Ins. Co. *v.* Dunken, *supra*.

Conclusion.

Briefly summarized our contentions are:

1. The trial court had full jurisdiction to determine this cause, and its judgment for the petitioner should be upheld.

2. The decision of the Circuit Court that the trial court had no jurisdiction over this cause for the reason that the petition failed to allege the action of the Director of the Veterans' Bureau in denying the application, was arbitrary and capricious, is erroneous for the reasons that the allegations of the petitioner are sufficient, and that the respondent has waived the right to take advantage of the defect, if there is any, by failure to make timely and specific objection in the trial court.

3. The decision of the Circuit Court that this case does not fall within the terms of Section 19 is erroneous for the reason that a claim of a right to reinstate a lapsed portion of War Risk insurance policy is a claim under a contract of insurance within the purview of that section.

We therefore submit the judgment of the Circuit Court of Appeals is erroneous and a writ of certiorari should be issued herein to the end that said judgment should be reviewed, and on final hearing reversed.

JEAN S. BREITENSTEIN,
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LOWELL D. HUNT,
Of Counsel.

FILED
DEC 7
CHARLES ELMORE

FILE COPY

No. 269

In the Supreme Court of the United States

OCTOBER TERM, 1929

ROBERT G. MEADOWS, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS OF THE COURT BELOW

The opinion of the Circuit Court of Appeals on the jurisdictional question is reported in 32 F. (2d) 440. (R. 82–85.) Its opinion in the matter of striking out the Government's Bill of Exceptions is reported in 29 F. (2d) 739. (R. 80–81.) The District Court delivered no formal opinion; the judge's oral opinion appears in the record at page 46.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 21, 1929; rehearing was denied May 28, 1929. (R. 85–87.) The petition for certiorari was filed July 29, 1929. The jurisdiction of

this Court is invoked under Section 240 (a), Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Is a disagreement as to a claim for reinstatement of lapsed war risk insurance, as authorized by a statute enacted after the insurance had lapsed, to be considered a "disagreement as to claim *under a contract of insurance,*" within the meaning of Section 19, World War Veterans' Act, permitting suit in such cases?

2. If so, is the requirement that the applicant submit "proof satisfactory to the director showing * * * that the applicant is not totally and permanently disabled" satisfied merely by proving in the District Court that he was not so disabled?

3. Were the allegations in the petition in the District Court that the Director had acted "erroneously and contrary to the terms of War Risk Insurance Act, and amendments thereto," sufficient to invoke the jurisdiction of the District Court to review decisions "wholly without evidential support or wholly dependent upon a question of law or clearly arbitrary or capricious," in accordance with the rule laid down by this Court?

THE STATUTES INVOLVED

Section 2, Act of August 9, 1921, c. 57, 42 Stat. 147, 148, "An Act to establish a Veterans' Bureau * * * and further to amend and modify the War Risk Insurance Act" (this has now become,

with modifications, Section 5, World War Veterans' Act, 1924, U. S. C., Title 38, Sec. 426):

> The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this Act, and for that purpose shall have full power and authority to make rules and regulations not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out its purposes and shall decide all questions arising under this Act except as otherwise provided herein.

Section 19, World War Veterans' Act, 1924, as amended June 7, 1924, c. 320, 43 Stat. 607, 612, and March 4, 1925, c. 553, 43 Stat. 1302 (U. S. C., Title 38, Sec. 445):

> In the event of disagreement as to claim under a contract of insurance between the Bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. * * *

Section 408, War Risk Insurance Act, added by Sec. 27, Act of August 9, 1921, 42 Stat. 156, *supra* (this has now become, with modifications, Sec. 304, World War Veterans' Act, 1924, U. S. C., Title 38, Sec. 515):

In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with, an application for reinstatement of lapsed or canceled yearly renewable term insurance or application for United States Government life insurance (converted insurance) hereafter made may be approved: *Provided,* That the applicant's disability is the result of an injury or disease or of an aggravation thereof suffered or contracted in the active military or naval service during the World War: *Provided further,* That the applicant during his lifetime submits proof satisfactory to the director showing the service origin of the disability or aggravation thereof and that the applicant is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per annum compounded annually on each premium from the date said premium is due by the terms of the policy: *Provided further,* That where any soldier has heretofore allowed his insurance to lapse, while suffering from wounds or disease suffered or contracted in line of service, and was at the time he allowed his said policy to

lapse entitled to compensation on account thereof in a sum equal to or in excess of the amount due from him in premiums on his said insurance, and has since died from said wounds or disease without collecting or making claim for said compensation, or being allowed to reinstate his said policy on account of his physical condition, then and in that event said policy shall not be considered as lapsed, and the Veterans' Bureau is hereby authorized and directed to pay to the beneficiaries of said soldier under said policy the amount of said insurance less the premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law.

STATEMENT

This is an action at law, instituted by the petitioner (the insured) in the District Court for the District of Colorado, to require the United States to reinstate lapsed insurance in accordance with the provisions of Section 408, War Risk Insurance Act, and to pay benefits under the policy at the rate of $40.25 per month from August 3, 1923, as for total permanent disability existing since that time. (R. 4–6.)

A policy in the amount of $10,000 was issued upon the petitioner's life while he was serving in the Army during the World War. On February 1, 1920, he converted $3,000 of the insurance into a twenty-payment life policy and allowed the remaining $7,000 to lapse. On February 21, 1923, he made application for reinstatement and conver-

sion of the lapsed insurance, under Section 408, which had been added to the War Risk Insurance Act by the Act of August 9, 1921, *supra*. (R. 5.)

The petition, filed in the District Court, alleged that when making such application for reinstatement the petitioner tendered the necessary premiums and interest, "complied with any and all the terms" of the statutes, rules, and regulations, and was suffering from a disability (pulmonary tuberculosis) "of a degree less than permanent and total disability," but that "the defendant erroneously and contrary to the terms of the War Risk Insurance Act, and amendments thereto, rejected and refused the plaintiff's application."

It is conceded that the petitioner complied with all requirements of the statute except that he failed to prove to the satisfaction of the Director that the disability from which he was *then* (February 21, 1923) suffering was less than total and permanent. (R. 7.)

A jury having been waived in writing, the trial court heard evidence offered by the petitioner. The Government offered no evidence. The court decided in favor of the petitioner. (R. 11–12.) It did not appear what proof was submitted to the Director. (R. 47.)

The cause went to the Circuit Court of Appeals upon writ of error. The Government's bill of exceptions was there stricken from the record because

not settled within the time permitted. 29 F. (2d.) 739. (R. 80–81.)

Later, considering the cause as before it "only on the record proper," the Circuit Court of Appeals concluded that the trial court had been without jurisdiction because (1) there was no sufficient allegation that the action of the Director had been "wholly without evidential support or wholly dependent upon a question of law or clearly arbitrary or capricious," within the rule laid down by this Court, and (2) the matter could not be considered as one of "disagreement as to claim under a contract of insurance," within the meaning of Section 19, World War Veterans' Act, 1924. It accordingly reversed the judgment of the District Court and ordered the dismissal of the petition for lack of jurisdiction. 32 F. (2d) 440. (R. 82–86.)

ARGUMENT

I

IS A DISAGREEMENT AS TO A CLAIM FOR REINSTATEMENT OF LAPSED WAR RISK INSURANCE A "DISAGREEMENT AS TO CLAIM UNDER A CONTRACT OF INSURANCE" WITHIN THE MEANING OF SECTION 19?

It is true that at the time of petitioner's application for reinstatement there was an earlier contract which had lapsed. Petitioner argues that when a contract is reinstated there is no new contract but that "a right is exercised which is given by, and enforceable under, the original insurance contract"

and that "the claim to such a right is a claim under a contract of insurance." (P. 16 of brief.) Petitioner in his brief says that he knows of no Federal decision bearing directly on the question presented here. (P. 17 of brief.) The Circuit Court of Appeals in the instant case said (R. 84, 85):

> * * * Here, the claim is not under a contract of insurance but the claim is to have insurance reinstated, which plaintiff himself alleges has lapsed. While such a reinstated contract of insurance is connected with and, in a sense, based upon the earlier contract of insurance, yet, that earlier contract has ceased to have existence and validity and the contract, if reinstated, becomes a new contract. Judge Van Valkenburgh, speaking for this court, in *Stevens* v. *United States* (opinion filed December 14, 1928), stated, in speaking of a similar reinstated contract, that "the reinstatement made brought into existence a new contract between the parties." Therefore, a claim to a right to reinstate such a contract of insurance which has lapsed is not a "claim under contract of insurance between the Bureau and any person or persons claiming thereunder," within the meaning of Section 19.

Stevens v. *United States* is reported in 29 F. (2d) 904. See also *United States* v. *Buzard* (C. C. A. 9th), 33 F. (2d) 883; *United States* v. *Allen* (C. C. A. 9th), 33 F. (2d) 888.

Petitioner relies upon cases holding that certain commercial policies of life insurance made in pur-

suance of the provisions of earlier policies are to be governed by the law applicable to the earlier contract. None of these was a case of war risk insurance and none of them involved any statutory provisions similar to that quoted above. *Aetna Life Insurance Company* v. *Dunken,* 266 U. S. 389, is the case chiefly relied upon by petitioner. In that case this Court said (p. 399):

> * * * By those provisions, upon the simple application of the insured, the new policy must issue. *Nothing was left to future agreement.* The terms of the new policy were fixed when the original policy was made. (Italics ours.)

Petitioner's contract contained no such provisions, but, on the contrary, there was something definite left for future agreement, and that was whether or not this petitioner satisfied the Director of his insurability.

We do not dispute the contention of the petitioner that the original certificate of insurance is subject to "changes in the law no less than changes in the regulations" in accordance with the holding of this Court in *White* v. *United States,* 270 U. S. 175, 180. Neither do we deny that the rights of the parties "are to be ascertained from the terms of their contract" as was said in *Jensen* v. *United States,* 29 F. (2d) 951, 952, cited by the petitioner. The ultimate holding in that case was, however, reversed by the Circuit Court of Appeals for the

Ninth Circuit on November 12, 1929, that court saying:

> The sole question presented by the appeals * * * is whether or not these policies became incontestable where a total loss occurred within six months after the issuance of the new policy. This question is answered in the negative * * *. Judgment reversed.

II

IS THE REQUIREMENT THAT THE APPLICANT SUBMIT "PROOF SATISFACTORY TO THE DIRECTOR SHOWING * * * THAT THE APPLICANT IS NOT TOTALLY AND PERMANENTLY DISABLED" SATISFIED MERELY BY PROVING IN THE DISTRICT COURT THAT HE WAS NOT SO DISABLED?

The pleadings show that, after considering the application of this petitioner, the Director of the Bureau rejected the application for reinstatement. The petition alleges only that such action of the Director was erroneous and contrary to the terms of the statute (R. 5) and the District Court went no further than to say (R. 47):

> It seems to me that the action of the Director in grading this man as permanently and totally disabled was erroneous. Of course, the proof submitted to him may have been different from that before this court.

There is no allegation or finding as to what proof was submitted to the Director. It does appear, inferentially, that the proof was not actually "satisfactory to the Director," and there is no finding

that his action was wholly unsupported by evidence or that there was proof which should have been satisfactory to a reasonable man in the position of the Director.

We submit that the language "proof satisfactory to the Director" means something. This occurs only in regard to proof "showing the service origin of the disability or aggravation thereof and that the applicant is not totally and permanently disabled." There is no similar requirement as to proof of any other matter. It seems probable that Congress intended to vest the Director with power to determine the weight of evidence as to these matters and that it did not intend to allow the District Court to try out these issues *de novo* without paying any attention to the evidence which was submitted to the Director and without giving any weight to his determination.

If the practice followed by the District Court in this case is upheld, it seems likely that the District Courts will be flooded with cases involving this issue.

III

WERE THE ALLEGATIONS IN THE PETITION IN THE DISTRICT COURT SUFFICIENT TO INVOKE THE JURISDICTION OF THE DISTRICT COURT?

As the Circuit Court of Appeals said in the instant case (R. 84):

> It has been repeatedly determined that the grant of power given to the Director by Section 2 of the Act of 1921, to decide

> questions of fact, cannot be challenged, unless the controversy falls within Section 19 of the Act of 1924, or unless such decision is "wholly without evidential support or wholly dependent upon a question of law or clearly arbitrary or capricious" (*United States* v. *Williams,* decided January 2, 1929; *Silberschein* v. *United States,* 266 U. S. 221, 225; *Armstrong* v. *United States,* 16 Fed. (2d) 387, 389, this court; *United States* v. *Edwards,* 23 Fed. (2d) 477, 479, this court). There is no allegation in this petition that the action of the Director upon this matter was wholly unsupported by evidence or wholly dependent upon a question of law or clearly arbitrary and capricious. The only allegation is that the Director acted "erroneously and contrary to the terms of the War Risk Insurance Act and amendments thereto."

The petitioner in his brief, after conceding for the sake of argument that the petition does not comply with the requirements laid down by this Court in the *Silberschein case, supra,* asserts (p. 13):

> It will be conceded, we believe, that the court had general jurisdiction of the court [parties] and subject matter

and that the defect, within the rule announced in the *Silberschein case, supra,* is cured by the respondent's

> failure to make timely objection under the rule thus announced by the Circuit Court for

> the Eighth Circuit in *U. S.* v. *Edwards,* 23 Fed. (2d) 477, 479 * * *.

We submit that neither the *Edwards case* nor *Beyer* v. *LeFevre,* 186 U. S. 114, also cited by petitioner, has application to the instant case.

In the *Edwards case* the plaintiff sought recovery under a contract of insurance by reason of alleged mental incompetency existing within the period for which premiums had been paid and endeavored to have the court determine independently whether such incompetency existed. The Government contended that such rating of incompetency must be made, if at all, by the Bureau under the provisions of Section 306 of the World War Veterans' Act (43 Stat. 626), and not by the court. The trial court decided against the contention of the Government and entered judgment for the plaintiff. The Circuit Court of Appeals, after determining that the contention of the Government below was correct, sustained the judgment for the plaintiff because counsel for the Government in the trial had waived for the purposes of that case the necessity of obtaining a rating of incompetency by the Bureau.

In *Beyer* v. *LeFevre,* after the jurisdiction of the trial court had been challenged, and before the court had ruled thereon, the parties stipulated as follows (p. 116):

> It is hereby stipulated by and between the parties to this cause * * * that the court may make an order certifying certain issues, to be named in said order, to be tried

> by a jury of the Circuit Court, and that the findings by said jury upon said issues shall be returned to this court; whereupon a decree shall be entered in accordance with said findings * * *.

We submit that no such situation exists in the present case. The trial court did not have general jurisdiction of the subject matter.

CONCLUSION

No conflict of decisions upon the points raised has been shown, and we respectfully submit that the petition should be denied.

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DECEMBER, 1929.

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No. 269

In the Supreme Court of the United States

OCTOBER TERM, 1929

ROBERT G. MEADOWS, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the Circuit Court of Appeals on the jurisdictional question is reported in 32 F. (2d) 440. (R. 71.) Its opinion on striking out the bill of exceptions is reported in 29 F. (2d) 739. (R. 69.) The oral opinion of the District Court is not reported but appears in the record at page 50.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 21, 1929. (R. 74.) Petition for rehearing was denied May 28, 1929. (R. 75.)

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The petition for certiorari was filed July 29, 1929, and granted January 6, 1930. (R. 76.) The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Has a District Court any jurisdiction to order the reinstatement of lapsed war risk life insurance?

2. If so, may a District Court order the reinstatement of such insurance without finding that the proof submitted to the Director of the Veterans' Bureau showed that the applicant was not totally and permanently disabled at the time of his application for reinstatement?

3. Was there any allegation or finding sufficient to satisfy the rule that a decision of the Director may be reversed by a court if "wholly without evidential support or wholly dependent upon a question of law or clearly arbitrary or capricious?"

STATUTES INVOLVED

These are set forth in the Appendix to this brief, pp. 24–27, *infra*.

STATEMENT

The petitioner brought this action at law in the District Court of the United States for the District of Colorado to require the United States to rein-

state that portion of his war risk insurance policy which had lapsed, and to pay the benefits under the policy sought to be reinstated at the rate of $40.25 per month from August 3, 1923, on the ground of permanent and total disability from that date. (R. 4, 5.)

The amended petition filed in that court alleged the following facts (R. 4–5): A policy in the amount of $10,000 insuring the petitioner against death or permanent and total disability was issued to petitioner while he was serving in the Army during the World War. On February 1, 1920, he converted $3,000 of this insurance into a twenty-payment life policy and allowed the remaining $7,000 to lapse. On February 21, 1923, he made application for reinstatement and conversion of the lapsed insurance.

This petition further alleged that when making such application for reinstatement the petitioner tendered the necessary premiums and interest, "complied with any and all the terms" of the statutes, rules, and regulations; that he was suffering from a disability (pulmonary tuberculosis) "of a degree less than permanent and total disability," but that "the defendant erroneously and contrary to the terms of the War Risk Insurance Act, and amendments thereto, rejected and refused the plaintiff's application."

The amended petition prayed "judgment against the defendant directing it to reinstate and convert

the remaining $7,000 of his insurance policy * * * and for the monthly benefits, on said policy in the sum of $40.25 per month for each and every month since August 3, 1923, which totals $1,384.00, and such other and further relief that the court may deem proper in the premises." (R. 5–6.)

The defendant's answer (R. 6–7) denied that the plaintiff complied with "any and all U. S. Veterans' Bureau rules and regulations pertaining to such application" and that "at the time said application was made the plaintiff was suffering from a disability, to wit, tuberculosis (pulmonary), of a degree less than permanent and total disability."

A stipulation in writing was filed waiving trial by jury. (R. 7.) The District Court made no finding of fact except the following, appearing in its "Judgment" (R. 10–11):

> A trial by jury having been expressly waived by the counsel for the respective parties, the cause was tried before the court sitting without a jury; whereupon witnesses on the part of the Plaintiff were sworn and examined, the Defendant not presenting any evidence; and the evidence being closed, the cause was submitted to the court for consideration and decision, and, after due deliberation thereon, the court finds specifically that the Plaintiff was not permanently and totally disabled on February 21, A. D. 1923; that he is entitled to have the Seven Thousand Dollars ($7,000.00) remaining of his war risk insur-

ance reinstated; that he was permanently and totally disabled on and after August 3, A. D. 1923; that the court finds generally for the Plaintiff; that he is entitled to judgment and other and further relief as prayed in the amended complaint.

It is therefore ordered and adjudged that the Plaintiff's remaining Seven Thousand Dollars ($7,000.00) of war risk insurance be, and it is hereby reinstated as of February 21, A. D. 1923, upon his tendering the necessary premiums therefor.

That plaintiff, Robert G. Meadows have and recover of and from the defendant, the United States of America, judgment in the sum of One Thousand Nine Hundred Seventy-two and 25/100 Dollars ($1,792.25), being an amount equal to Forty and 25/100 Dollars ($40.25), for each and every month beginning the 3rd day of August A. D. 1923, and ending with the 3rd day of September, A. D. 1927.

In an oral opinion handed down at the conclusion of the trial, the District Court said (R. 52):

> It seems to me that the action of the Director in grading this man as permanently and totally disabled was erroneous. Of course, the proof submitted to him may have been different from that before this court. We can only judge the case by the evidence submitted here.

It consequently appears that the court did not consider what the decision should have been on the tes-

timony presented to the Director, but decided the case upon the testimony introduced before it, which may have been entirely different from the proof submitted to the Director.

The cause went to the Circuit Court of Appeals upon writ of error. The Government's bill of exceptions was there stricken from the record because not settled within the time permitted. 29 F. (2d.) 739. (R. 70.)

Later, considering the cause as before it "only on the record proper," the Circuit Court of Appeals concluded that the trial court had been without jurisdiction because (1) there was no sufficient allegation that the action of the Director had been "wholly without evidential support or wholly dependent upon a question of law or clearly arbitrary or capricious," within the rule laid down by this Court, and (2) the matter could not be considered as one of "disagreement as to claim under a contract of insurance," within the meaning of Section 19, World War Veterans' Act, 1924. It accordingly reversed the judgment of the District Court and ordered the dismissal of the petition for lack of jurisdiction. 32 F. (2d) 440. (R. 71–74.)

SUMMARY OF ARGUMENT

1. A District Court has no jurisdiction to order a reinstatement of a lapsed policy of war risk insurance. The original Act providing for war risk life insurance contained no provision for reinstatement if the policy lapsed, but reinstatement was

provided for in regulations promulgated by the Veterans' Bureau. These required as a condition to reinstatement proof as to certain matters satisfactory to the Director. In the Act of 1921, Congress provided that an application for reinstatement might be approved upon certain conditions, one of which was that the applicant submit "proof satisfactory to the director showing that he is not totally and permanently disabled." The new section did not provide for a review of the decision of the Director, and no existing or subsequent provision of the legislation relating to war risk insurance covered the matter in express language. From the outset there has been a provision that "in the event of disagreement as to claim under a contract of insurance between the bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States" in a District Court. It is submitted that this language, which has not been changed substantially in numerous amendments, is not applicable to reinstatement, and that a proper construction of all of the provisions of the statutes shows that in this matter the decision of the director is to be conclusive, unless capricious.

2. If the statutes should be construed to give the District Court jurisdiction over the matter of reinstatement of war risk life insurance policies, that jurisdiction should be confined to a determination of whether the evidence submitted to the Director was sufficient to establish the fact that the applicant

was not totally and permanently disabled at the time of his application. They do not authorize the District Court to try out the issue of the condition of the insured on new testimony, as it did in the instant case.

3. Neither the allegations of the petition nor the court's findings showed that the decision of the Director was capricious.

ARGUMENT

I

THE DISTRICT COURT HAS NO JURISDICTION TO ORDER THE REINSTATEMENT OF LAPSED WAR RISK LIFE INSURANCE

The first authority for granting war risk life insurance is in the War Risk Insurance Act of October 6, 1917, c. 105, Sec. 400, 40 Stat. 398, 409. Neither that Act nor any of its amendments up to August 9, 1921, contained any provision for the reinstatement of a policy, or a portion thereof, which had lapsed. In the Act of August 9, 1921, Section 27, c. 57, 42 Stat. 147, 156, 157, amending the Act of October 6, 1917, Congress added a new section, to be known as Section 408, providing for the reinstatement of lapsed insurance.

Neither the original Section 408 nor any modification or amendment of it specifically provides that a District Court or any other court may order the reinstatement of insurance, and there is no express provision to this effect in any of the legislation relating to war-risk insurance.

The District Court held that Section 19 of the World War Veterans' Act gave the court jurisdiction, and the petitioner relies upon this section. Section 19 had its origin in Section 405 of the War Risk Insurance Act of October 6, 1917 (40 Stat. 410), which provided—

> That in the event of disagreement as to a claim under the contract of insurance between the bureau and any beneficiary or beneficiaries thereunder, an action on the claim may be brought against the United States in the district court of the United States in and for the district in which such beneficiaries or any one of them resides. The court, as part of its judgment, shall determine and allow such reasonable attorney's fees * * *.

It was in this form at the time of the passage of the Act of August 9, 1921, which added Section 408 to the War Risk Insurance Act and which did not modify or even refer to Section 405. As there was no provision for reinstatement in the Act of 1917, it is obvious that Congress could not in 1917 have intended Section 405 to include a proceeding for reinstatement of a policy, and its language is not such that it is clearly applicable to reinstatement.

No indication that Congress intended that a proceeding for reinstatement could be brought in a court can be found in the language of Section 408. The language in its natural meaning is permissive only—in event of compliance with rules and regulations an application for reinstatement "may be

approved" upon certain conditions, one of which is "that the applicant during his lifetime submits proof satisfactory to the director showing that he is not totally and permanently disabled." There is nowhere else in the legislation pertaining to war-risk insurance language similar to that last quoted, and this fact tends to corroborate the conclusion, which would be reached from an inspection of the language alone, that Congress intended to make the decision of the Director final as to reinstatement. The same Act established the Veterans' Bureau, and Section 2 thereof (42 Stat. 148) provided that the Director should "decide all questions arising under this Act except as otherwise provided herein." (Cf. Act of October 6, 1917, Section 2, 40 Stat. 398.) If Congress had intended to confer rights to sue for reinstatement, it is unlikely that it would have left the matter unmentioned. We may assume that under general principles of law there would be a remedy if the Director acted arbitrarily. In such a situation the remedy would be a writ of mandamus against the Director.

Prior to the passage of Section 408 in the Act of August 9, 1921, the matter of reinstatement was governed by Veterans' Bureau (Bureau of War Risk Insurance) Regulations, which were amended from time to time, but most, if not all, contain provisions such as that reinstatement can be effected by furnishing data and proof as to health conditions which shall be "in form satisfactory to the bureau"

(Treasury Decision 32 War Risk, dated September 20, 1918); "to the satisfaction of the Director of the Bureau of War Risk Insurance" (Treasury Decision 39 War Risk, dated December 17, 1918); and the similar language in Treasury Decision 45 War Risk of May 17, 1919, Treasury Decision 47 War Risk of July 25, 1919, and Treasury Decision 61 War Risk of June 30, 1920.

The legislative history of Section 408 contains no intimation that Congress intended to give the courts the power to review or disregard the Director's decision as to reinstatement. On the other hand, there is nowhere in the Congressional Record or the committee reports any express statement to the effect that the decision of the Director as to reinstatement is to be final. The Chairman of the Committee in reporting the bill merely stated that prior to that time the matter of the reinstatement of insurance was subject to the rules and regulations promulgated by the Veterans' Bureau and that the Committee believed that it was time for the question of reinstatement to be made the subject of Congressional enactment. (Cong. Record, Vol. 61, pt. 2, p. 2046, 67th Cong., 1st Sess.) The Senate Committee having charge of the Bill, in its report, made only the following statement in regard to the matter (Report No. 231, p. 11, Senate Reports, Vol. 1, 67th Cong., 1st Sess.):

> Reinstatement of lapsed insurance. Section 26 of the House bill adds to article 4 of the war risk insurance act a new section, to be known as section 408, the purpose of which is to provide for the reinstatement of lapsed insurance when the insured is disabled by reason of injury or disease suffered or contracted in the active service.

It would seem that the phrase used in the statute, "proof satisfactory to the director," was an adoption of the phraseology previously used in the Bureau Regulations.

It is true, as petitioner urges, that a reinstated policy is dependent upon the earlier lapsed contract and that the rights and privileges under the reinstated contract are measured by an earlier lapsed contract, as reinstatement can not be effected for more than the amount of the original contract. But the right to the reinstatement exists solely by reasons of the provisions of Section 408 (as amended from time to time), and is subject to the limitations imposed in that section.

We concede, of course, that all subsequent changes in the War Risk Insurance Act, including Section 304, apply to the original contract. In *White* v. *United States,* 270 U. S. 175, 180, this Court said:

> The certificate of insurance provided in terms that it should be "subject in all respects to the provisions of such Act [of 1917], of any amendments thereto, and of all regu-

lations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract." These words must be taken to embrace changes in the law no less than changes in the regulations.

The petitioner argues that the reinstatement was made in pursuance of the provisions of the original contract, and cites numerous cases, including *Aetna Life Insurance Co.* v. *Dunken*, 266 U. S. 389, which hold that in various situations a commercial life insurance contract made in pursuance of the provisions of an earlier one is the consummation of the provisions of the original contract. From this, petitioner argues that his right to a reinstatement of his policy is a "claim under a contract of insurance" within the meaning of Section 19.

We submit that the question must be decided by a consideration of the meaning and intent of the particular statutory provisions, and that the decisions quoted are of little, if any, assistance in determining this. As we have pointed out above, the provisions of Section 405 were not made in contemplation of a controversy over reinstatement of a policy. Modifications of this section subsequent to the passage of Section 408 and the modifications of Section 408 itself give no indication that Congress considered that the provision for

jurisdiction of the courts did cover or should cover the matter of reinstatement.

By the Act of June 7, 1924, the War Risk Insurance Act, as amended, was repealed (43 Stat. 607, 630), but Section 19 of the 1924 Act (43 Stat. 607, 612) contained provisions for "an action on the claim" almost identical with those of Section 408, adding a sentence which was later amended to read as follows (see p. 26, *infra*):

> * * * The procedure in such suits shall be the same as that provided in sections 5 and 6 of the Act entitled "An Act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887, and section 10 thereof in so far as applicable.

The Act of March 3, 1887, is the Tucker Act. (24 Stat. 505.) This does provide for suits in equity and this reference to the Tucker Act shows that the District Court might entertain equity suits in controversies arising under insurance contracts. But it would seem that this was not enough to confer upon the District Court jurisdiction over the matter of reinstatement, the most important condition of which, as the new Act continued to provide, was that the insured must submit "proof satisfactory to the director."

Section 304 of the Act of 1924 contains substantially the same language as Section 408 of the Act of 1921, including the language

> *Provided further,* That the applicant during his lifetime submits proof satisfactory to the director showing * * * that the applicant is not totally and permanently disabled.

Section 304 of the 1924 Act was amended by Section 15 of the Act of March 4, 1925 (43 Stat. 1302, 1310, 1311), and also by Section 15 of the Act of July 2, 1926 (44 Stat. 799), but only in particulars which have no bearing upon the question involved in the instant case.

Until the instant case was brought in 1926, apparently no application was ever made to a District Court to compel reinstatement of a policy, and there seems to be no reason to believe that anybody contemplated that such a suit could be brought under the provisions of the existing law. If Congress had intended to give the District Courts jurisdiction over such a matter it seems probable that it would have made clear provisions for this at the same time that it was making one of the numerous amendments to the law which we have indicated above.

Congress has not given veterans the right to bring suit as to war benefits generally.

Three classes of benefits have been provided by Congress for veterans of the World War—war risk insurance, compensation for service-connected disability, and adjusted service compensation. The first two benefits are given under authority of the War Risk Insurance Act of October 6, 1917, as carried into the World War Veterans' Act of June 7,

1924, and its amendments; and adjusted service compensation is given under authority of the Act of May 19, 1924, as amended by the Act of July 3, 1926, "An Act To provide adjusted compensation for veterans of the World War, and for other purposes," c. 751, 43 Stat. 826 (U. S. C., Title 38, Secs. 601–683), which Act is entirely distinct from the War Risk Insurance Act and the World War Veterans' Act.

Section 19 of the World War Veterans' Act confers jurisdiction on the courts only to hear and determine a claim on a contract of war risk insurance; and the courts have no jurisdiction, therefore, to entertain a suit for disability compensation, at least unless the action of the Director is wholly without evidential support or wholly dependent upon a question of law or unless it is clearly arbitrary or capricious. *Silberschein* v. *United States,* 266 U. S. 221, 225. The courts have no jurisdiction of a claim for the proceeds of an adjusted service certificate by reason of the fact that Section 310 of the World War Adjusted Compensation Act, as amended by the Act of July 3, 1926, 44 Stat. 828 (U. S. C. Sup. III, Title 38, Sec. 620) specifically provides that the decision of the Director on all matters within his jurisdiction under that Act shall be final and conclusive. *Williams* v. *United States,* 278 U. S. 255.

Under Section 408, the chief question to be determined is whether the applicant is "totally and permanently disabled." The question is of his

condition at the time of the application. The Director is well qualified to determine this matter, and there would seem to be no reason to allow a court or a jury to substitute for the decision of the Director, made at the very time of the application, its own opinion, at a trial which would obviously not occur until a considerable time later. The fact that the insured has the right to sue in court on a policy which is in force, for which he has paid all of the required premiums, has no bearing upon his right to sue for reinstatement of a policy which has admittedly lapsed.

The Circuit Court of Appeals decided the point under discussion upon the ground that a right to reinstate a contract of insurance which has lapsed is not "a claim under a contract of insurance," within the meaning of Section 19. It said (R. 73):

> Here, the claim is not under a contract of insurance but the claim is to have insurance reinstated, which plaintiff himself alleges has lapsed. While such a reinstated contract of insurance is connected with and, in a sense, based upon the earlier contract of insurance, yet, that earlier contract has ceased to have existence and validity and the contract, if reinstated, becomes a new contract. Judge Van Valkenburgh, speaking for this court, in *Stevens* v. *United States* (opinion filed December 14, 1928), stated, in speaking of a similar reinstated contract, that "the reinstatement made brought into existence a new contract between the

parties." Therefore, a claim to a right to reinstate such a contract of insurance which has lapsed is not a "claim under contract of insurance between the Bureau and any person or persons claiming thereunder," within the meaning of Section 19.

Stevens v. *United States* is reported in 29 F. (2d) 904. See also *United States* v. *Buzard* (C. C. A. 9th), 33 F. (2d) 883; *United States* v. *Kusnierz* (C. C. A. 9th), 33 F. (2d) 887; *United States* v. *Allen* (C. C. A. 9th), 33 F. (2d) 888.

Whether or not the reasoning of the court was right, we submit that its conclusion was correct.

II

EVEN IF THE DISTRICT COURT HAD JURISDICTION, IT WAS ONLY TO DETERMINE WHETHER THE DIRECTOR SHOULD HAVE REINSTATED THE POLICY ON THE EVIDENCE SUBMITTED TO HIM

If this Court should hold, contrary to our contentions, that a District Court is given some jurisdiction over the matter of reinstatement, the question remains as to the extent of that jurisdiction.

The pleadings show that, after considering the application of this petitioner, the Director of the Bureau rejected the application for reinstatement. The petition alleges only that such action of the Director was erroneous and contrary to the terms of the statute (R. 5) and the District Court said (R. 52):

> It seems to me that the action of the Director in grading this man as permanently and totally disabled was erroneous. Of course, the proof submitted to him may have been different from that before this court.

There is no allegation or finding as to what proof was submitted to the Director. It does appear, inferentially, that the proof was not actually "satisfactory to the Director," and there is no finding that his action was wholly unsupported by evidence or that there was proof which should have been satisfactory to a reasonable man in the position of the Director.

We contend that the language "proof satisfactory to the director" means something. This occurs in no provision of the legislation in regard to war risk insurance except that relating to reinstatement. This language indicates that Congress did not intend to authorize the District Courts to try out this issue on testimony other than that submitted to the Director. If the District Courts have any jurisdiction of the matter, it is only to determine whether the proof submitted to the Director was such as should have satisfied him.

III

THERE WAS NO ALLEGATION OR FINDING THAT THE DECISION OF THE DIRECTOR WAS CAPRICIOUS

It may be conceded that, even under the loose wording of Section 408, the law would afford a remedy if the Director capriciously refused to rein-

state a policy. We submit that the remedy would be by writ of mandamus against the Director, and that, of course, was not applied for in the instant suit. Moreover, neither the petition nor the findings indicate that there was any capricious action.

As the Circuit Court of Appeals said in the instant case (R. 72):

> It has been repeatedly determined that the grant of power given to the Director by Section 2 of the Act of 1921, to decide questions of fact, cannot be challenged, unless the controversy falls within Section 19 of the Act of 1924, or unless such decision is "wholly without evidential support or wholly dependent upon a question of law or clearly arbitrary or capricious" (*United States* v. *Williams,* decided January 2, 1929; *Silberschein* v. *United States,* 266 U. S. 221, 225; *Armstrong* v. *United States,* 16 Fed. (2d) 387, 389, this court; *United States* v. *Edwards,* 23 Fed. (2d) 477, 479, this court). There is no allegation in this petition that the action of the Director upon this matter was wholly unsupported by evidence or wholly dependent upon a question of law or clearly arbitrary and capricious. The only allegation is that the Director acted "erroneously and contrary to the terms of the War Risk Insurance Act and amendments thereto."

The petitioner in his brief, after conceding for the sake of argument that the petition does not

comply with the requirements laid down by this Court in the *Silberschein case, supra,* asserts (p. 14):

> It will be conceded, we believe, that the court had general jurisdiction of the cause and subject-matter.

and that the defect, within the rule announced in the *Silberschein case, supra,* is cured by the respondent's

> failure to make timely objection under the rule thus announced by the Circuit Court for the Eighth Circuit in *U. S.* v. *Edwards,* 23 Fed. (2d) 477, 479 * * *.

We submit that neither the *Edwards case* nor *Beyer* v. *LeFevre,* 186 U. S. 114, also cited by petitioner, has application to the instant case.

In the *Edwards case* the plaintiff sued on a contract of war risk insurance, sought to excuse nonpayment of premiums by reason of alleged mental incompetency, and endeavored to have the court determine independently whether such incompetency existed. The Government contended that such rating of incompetency must be made by the Bureau under the provisions of Section 306 of the World War Veterans' Act (43 Stat. 626), and not by the court. The trial court decided against the contention of the Government and entered judgment for the plaintiff. The Circuit Court of Appeals, after determining that the contention of the Government below was correct, sustained

the judgment for the plaintiff because counsel for the Government in the trial had waived for the purposes of that case the necessity of obtaining a rating of incompetency by the Bureau. The court (the same court which decided the instant case) said (p. 480):

> We regard this concession by counsel for the Government to be a complete waiver of the failure of plaintiff in error to procure a rating from the bureau, either before the suit was brought or thereafter. The District Court having general jurisdiction of the parties and of the subject-matter, this requirement of the statute is subject to waiver.

In *Beyer* v. *LeFevre,* this Court held that the appellant was barred from objecting in an appellate court that the trial court had no jurisdiction, *as a court of equity,* of a suit to set aside a will, in view of the facts that he had consented to a hearing and adjudication according to equity practice and that the court had jurisdiction over the issue and the subject matter, as a court of law.

We submit that a different situation exists in the present case. The trial court did not have general jurisdiction of the subject-matter.

The District Court did not so hold and the Circuit Court of Appeals specifically held to the contrary. Our view is, therefore, that the plaintiff has no recourse to the courts by virtue of the rule in the *Silberschein case.*

CONCLUSION

It is respectfully submitted that the decision of the Circuit Court of Appeals should be affirmed.

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FEBRUARY, 1930.

APPENDIX

STATUTES INVOLVED

Section 408 of the War Risk Insurance Act of October 6, 1917, c. 105, 40 Stat. 398, as amended by the Act of August 9, 1921, c. 57, 42 Stat. 147, 156—which was carried into the World War Veterans' Act of June 7, 1924, c. 320, 43 Stat. 607, 625, as Section 304 and amended by the Act of July 2, 1926, c. 723, 44 Stat. 790, 799 (U. S. C. Sup. III, Title 38, Sec. 515), provides:

> In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with an application for reinstatement, in whole or in part, of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) hereafter made may be approved if made within one year after the passage of this amendatory Act or within two years after the date of lapse or cancellation: *Provided,* That the applicant's disability is the result of an injury or disease or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War: *Provided further, That the applicant during his lifetime submits proof satisfactory to the director showing that he is not totally and permanently disabled.* As a condition, however, to the acceptance of an application for the reinstatement of

lapsed or canceled yearly renewable term insurance, where the requirements as to the physical condition of the applicant have not been complied with, or, for the reinstatement of the United States Government life insurance (converted insurance), the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per annum, compounded annually, on each premium from the date said premium is due by the terms of the policy: *Provided further,* That where within one year of this amendatory Act all of the requirements for reinstatement of yearly renewable term insurance under this section are complied with, except the payment of unpaid premiums with interest, and proof satisfactory to the director is furnished showing the applicant is unable to pay such premiums with interest or some part thereof, the application may be approved, and the amount of unpaid premiums with interest as provided in this section shall be placed as an interest-bearing indebtedness against the insurance, such indebtedness to bear interest at the rate of 5 per centum per annum compounded annually, to be deducted in any settlement thereunder: *And provided further,* That no yearly renewable term insurance shall be reinstated after July 2, 1927. (Italics ours.)

Section 19 of the World War Veterans' Act of June 7, 1924, as amended by the Act of March 4, 1925, c. 553, 43 Stat. 1302 (U. S. C. Title 38, Sec. 445), so far as here applicable reads:

In the event of disagreement as to claim under a contract of insurance between the Bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. The procedure in such suits shall be the same as that provided in sections 5 and 6 of the Act entitled "An Act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887, and section 10 thereof in so far as applicable. All persons having or claiming to have an interest in such insurance may be made parties to such suit, and such as are not inhabitants of or found within the district in which suit is brought may be brought in by order of the court to be served personally or by publication or in such other reasonable manner as the court may direct. In all cases where the bureau acknowledges the indebtedness of the United States upon any such contract of insurance and there is a dispute as to the person or persons entitled to payment, a suit in the nature of a bill of interpleader may be brought by the bureau in the name of the United States against all persons having or claiming to have any interest in such insurance in the Supreme Court of the District of Columbia or in the district court in and for the district in which any of such claimants reside: *Provided,* That not less than thirty days prior to instituting such suit the bureau shall mail a notice of such intention to each of

> the persons to be made parties to the suit. The circuit courts of appeal and the Court of Appeals of the District of Columbia shall respectively exercise appellate jurisdiction and, except as provided in sections 239 and 240 of the Judicial Code, the decrees of the circuit courts of appeal and the Court of Appeals of the District of Columbia shall be final. This section shall apply to all suits now pending against the United States under the provisions of the War Risk Insurance Act as amended, or of the World War Veterans' Act, 1924, and amendments thereto.

Section 5 of the World War Veterans' Act of June 7, 1924, c. 320, 43 Stat. 608 (U. S. C. Title 38, Sec. 426), provides in part:

> The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this Act, and for that purpose shall have full power and authority to make rules and regulations, not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out its purposes, and shall decide all questions arising under this Act and all decisions of questions of fact affecting any claimant to the benefits of Titles II, III, or IV of this Act, shall be conclusive except as otherwise provided herein.

U. S. GOVERNMENT PRINTING OFFICE: 1930

SUPREME COURT OF THE UNITED STATES.

No. 269.—October Term, 1929.

Robert G. Meadows, Petitioner, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[April 14, 1930.]

Mr. Justice Sutherland delivered the opinion of the Court.

Petitioner brought this action against the respondent in a federal district court to require the reinstatement of a lapsed insurance policy issued under the War Risk Insurance Act of October 6, 1917, c. 105, § 400, 40 Stat. 398, 409; amended August 9, 1921, c. 57, § 27, 42 Stat. 147, 156, 157. It was alleged that, being enlisted in the United States army during the World War, he applied for and obtained, under the act, a policy of insurance in the sum of $10,000 against death and permanent and total disability. Thereafter, on February 1, 1920, $3,000 of this amount was converted into a 20-payment life policy, and the remaining $7,000 was allowed to lapse. In March, 1923, petitioner applied to the Director of the United States Veterans' Bureau for reinstatement of the policy in respect of the $7,000, asserting that he was then suffering from a disability of a degree less than permanent and total. The director of the bureau rejected the application and thereupon petitioner brought this action. The government answered, denying certain allegations and admitting others, and alleging that at the time of the application for reinstatement, and for a long time prior thereto, petitioner was permanently and totally disabled.

The case was tried by the court without a jury, and judgment rendered reinstating the policy to the extent of $7,000. The circuit court of appeals reversed the judgment upon the ground that the trial court was without jurisdiction, and directed a dismissal of the petition. 32 F. (2d) 440.

Prior to the amending act of 1921, there was no statutory provision for the reinstatement of lapsed policies, but the matter was

one of bureau regulation. By § 408 of that act, carried into the act of 1924 as § 304, c. 320, 43 Stat. 607, 625 (U. S. Code, Title 38, § 515), it was provided:

"In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with, an application for reinstatement, in whole or in part, of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) hereafter made may be approved if made within one year after the passage of this Act or within two years after the date of lapse or cancellation: . . . *Provided further,* That the applicant during his lifetime submits proof satisfactory to the director showing . . . that the applicant is not totally and permanently disabled."

The director denied the application on the ground that the applicant, at the time of making it, was totally and permanently disabled. The trial court held the contrary. The evidence upon which the director acted was not before the court, but the case was decided upon original evidence introduced upon the trial. The question was purely one of fact, which the director was authorized to determine; and his decision, unless within § 19 of the World War Veterans' Act of 1924, dealt with below, was final and conclusive. *United States* v. *Williams,* 278 U. S. 255; *Silberschein* v. *United States,* 266 U. S. 221, 225.

Section 19 of the act of 1924, as amended March 4, 1925, c. 553, § 2, 43 Stat. 1302 (U. S. Code, Title 38, § 445), provides in part:

"In the event of disagreement as to claim under a contract of insurance between the Bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies."

This provision, we think, has nothing to do with an application for reinstatement of a defunct policy. The right to reinstatement, when it exists, flows from the statutory provision and not from any undertaking expressed in the contract of insurance. No doubt, the policy holder may have the benefit of the statute, although passed subsequently to the issue of the policy, *White* v. *United States,* 270 U. S. 175, 180; but a reinstatement under the provisions of the statute would be not the fulfillment of a contractual obligation but, in effect, the making of a new contract by statutory sanction.

Aetna Life Ins. Co. v. *Dunken,* 266 U. S. 389, upon which petitioner here relies, is not to the contrary. There the original policy of insurance was a seven-year term policy. It provided expressly that upon any anniversary of its date, at the sole option of the insured, without medical reexamination, it was convertible into a twenty payment life commercial policy, etc. It was held that the converted policy was merely a continuation of the old one. This court said (p. 399):

"In effect, it is as though the first policy had provided that upon demand of the insured and payment of the stipulated increase in premiums that policy should, automatically, become a twenty payment life commercial policy. It was issued not as the result of any new negotiation or agreement but in discharge of preexisting obligations. It merely fulfilled promises then outstanding; and did not arise from new or additional promises. The result in legal contemplation was not a novation but the consummation of an alternative specifically accorded by, and enforceable in virtue of, the original contract. If the insurance company had refused to issue the second policy upon demand, the insured could have compelled it by a suit in equity for specific performance."

The situation in the present case is altogether different. The original policy had come to an end; liability under it had wholly ceased; a new application was required, together with proof of an existing condition sufficient to satisfy the director, before reinstatement could be made. The effect of the statute is to accord the privilege of reinstatement to the holder of a lapsed policy, not to read into it a promise to that end. The existence of the old policy is, of course, a necessary prerequisite to the consideration of a claim for the allowance of the statutory privilege, but the claim is one under the statute, not under the contract, and, consequently, does not fall within the terms of § 19.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.